TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1966

No. 43

LESTER J. ALBRECHT, PETITIONER,

vs.

THE HERALD COMPANY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 14, 1967
CERTIORARI GRANTED FEBRUARY 27, 1967

United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 18,161.
CIVIL.

LESTER J. ALBRECHT,
APPELLANT,

vs.

THE HERALD COMPANY, A CORPORATION, D/B/A GLOBE-DEMOCRAT PUBLISHING COMPANY,
APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

INDEX.

In the United States District Court,
Eastern District of Missouri,
Eastern Division.

Lester J. Albrecht,

Plaintiff,

vs.

The Herald Company, a Corporation, d/b/a Globe-Democrat Publishing Company,

Defendant.

Case No. 64 C 302(2). Meredith, J.

Complaint.

(Filed in U. S. District Court August 12, 1964.)

Count I.

Comes now plaintiff and for his complaint under Count I states that:

1. Plaintiff is a resident of the State of Missouri, and is an individual engaged in the business of owning and operating a newspaper carrier route known as St. Louis Globe-Democrat Route No. 99 in the County of St. Louis, Missouri, since June 1, 1956.

2. The Globe-Democrat Publishing Company, a Missouri corporation, was liquidated on December 29, 1963, and its assets and liabilities were transferred to and assumed by defendant The Herald Company, a corporation, incorporated and existing under the laws of the State of New York and having its principal place of business in the State of New York, which latter corporation is doing

business as Globe-Democrat Publishing Company in the City of St. Louis, Missouri, and elsewhere, said business consisting of the publishing and selling of a daily newspaper known as the "St. Louis Globe-Democrat", in said City and State as well as outside of said State. Defendant is engaged in commerce as defined in Section 12 of Title 15, U. S. C. A., and is engaged in activities affecting commerce.

3. This Court has jurisdiction over this cause of action and the parties under Title 15, U. S. C. A.; and also under Title 28, Section 1332, because plaintiff and defendant are citizens of different states and the matter in controversy exceeds the sum of $10,000.00.

4. Defendant and the Globe-Democrat Publishing Company (hereinafter sometimes referred to collectively as "the Publisher") for a long period of time prior to June 1, 1956, and up to the present time caused the said St. Louis Globe-Democrat newspaper to be delivered to its subscribers in the greater metropolitan St. Louis area by means of a system of carriers, and for the purpose of distributing and delivering its said newspaper, without cost to itself, to its subscribers, the Publisher divided the Greater Metropolitan St. Louis area into certain districts, commonly called routes, and has sold, given or approved and authorized the sale to various paper carriers, including plaintiff, of such routes, lists of subscribers within said routes, certain rights and privileges and the good will of the business of such newspaper carrier routes.

5. Plaintiff, as well as the other newspaper carriers for the Publisher, acquired his said route with the knowledge, consent and approval of the Publisher, and it was known, understood and agreed by and between plaintiff and the Publisher that, for the consideration paid and the promises and undertakings made by plaintiff, that in accordance with long, well-established custom, practice and

usage as between the Publisher and its carriers, that plaintiff was an independent contractor, that plaintiff would have the exclusive right to sell and deliver the St. Louis Globe-Democrat to the subscribers of said paper within his said route, and that the Publisher would not impair or destroy plaintiff's investment in his said route.

6. Plaintiff, as the owner and operator of said route, has since June 1, 1956, purchased St. Louis Globe-Democrat newspapers from the Publisher at wholesale, without the right to return any newspapers so purchased, and sold said newspapers at retail to numerous customers within said route with whom plaintiff has entered into separate agreements to deliver to them the St. Louis Globe-Democrat; and from the time he purchased said route has faithfully performed all of his duties as a carrier of defendant's newspaper, has paid promptly all monies due defendant, and has established a substantial and profitable business.

7. The Publisher has followed a practice for many years up to the present time of publishing in its newspaper the Publisher's "suggested retail prices" for delivery by carriers of its newspapers to customers.

8. The Publisher has followed a practice for many years up to the present time of requiring that carriers of defendant's newspaper sell the St. Louis Globe-Democrat to subscribers at prices no higher than the Publisher's "suggested retail prices."

9. Plaintiff since about 1961 was charging his customers $1.70 per month for the daily St. Louis Globe-Democrat, $.20 for the weekend issue of the St. Louis Globe-Democrat, and $.10 premium for Reader Insurance, if desired.

10. Defendant on May 20, 1964, sent a letter, a copy of which is marked Exhibit "A", attached hereto and made a part hereof, in which defendant stated that since plain-

tiff was charging subscribers more than the Publisher's "suggested retail prices", defendant was going to compete with plaintiff by selling its newspaper at retail itself, or for resale by another carrier.

11. In the aforesaid letter of May 20, 1964, defendant further stated it was sending to each resident of plaintiff's appointed territory an enclosed letter, a copy of which is marked Exhibit "B", attached hereto, and made a part hereof, in which defendant stated that plaintiff, an independent merchant, was charging more than defendant's "suggested retail price", and enclosing a form card, a copy of which is marked Exhibit "C", attached hereto, and made a part hereof, on which said persons were asked to advise defendant (1) if they had been paying over the suggested price, or (2) if they were a new subscriber, and in either event, defendant stated it would deliver its paper at the suggested retail price to such persons who returned said card to defendant.

12. Since May 20, 1964, defendant, its agents, servants and employees, have contacted plaintiff's customers and potential customers within plaintiff's said route, by telephone, and otherwise, and have advised said persons that plaintiff was overcharging them; that plaintiff was in a lot of trouble; that plaintiff was going to be replaced and would no longer be delivering defendant's newspapers; that plaintiff was no longer delivering defendant's newspapers; that plaintiff was no longer in business; and that there were other carriers who were going to take plaintiff's place; all of which statements and representations were false, malicious, wilful, unlawful and without just cause, and were committed by defendant with the intent, purpose and object of hindering and preventing plaintiff from exercising his lawful trade or business and for the purpose of interfering with plaintiff's business, were injurious to trade or commerce, and unlawfully interfered with the free exercise by plaintiff of the distribution and

sale of defendant's newspapers to subscribers within plaintiff's route.

13. Upon information and belief plaintiff states that defendant unlawfully conspired, combined and colluded with a person or persons unknown to plaintiff for the purpose of injuring plaintiff's business and to prevent plaintiff from exercising his lawful trade and business by interfering, hindering, and preventing plaintiff from buying at wholesale and thereafter selling at retail defendant's newspapers to all persons within plaintiff's route who desire to subscribe thereto.

14. Defendant has threatened, intimidated and interfered with plaintiff's operation and management of his business, and has unlawfully conspired, combined and colluded with a person or persons unknown to plaintiff to the end that defendant has issued orders to plaintiff to stop delivering the St. Louis Globe-Democrat to hundreds of subscribers to whom plaintiff had sold said newspaper over a period of years, and from the retail selling of which plaintiff had derived substantial profit, and defendant, and said person or persons unknown to plaintiff, since May 20, 1964, have been and are now delivering and selling said newspaper to said subscribers at defendant's suggested retail prices.

15. Defendant did wilfully, unlawfully, intentionally and maliciously conspire, combine and collude as aforesaid with said third person or persons for the purpose of interfering with, disrupting and injuring plaintiff's business and for the further purpose of fixing, controlling, establishing and maintaining the retail prices at which plaintiff and other newspaper carriers sell the St. Louis Globe-Democrat to subscribers within their routes.

16. Plaintiff has sustained great loss and damage by virtue of said unlawful conspiracies, collusion, combinations and acts of defendant as aforesaid. Plaintiff has

lost business, property, credit, customers, patronage, and good will, his good name and reputation have been besmirched and damaged, and plaintiff has been prevented and deterred from continuing, expanding and increasing his said business; defendant and the person or persons with whom it unlawfully conspired, combined and colluded intended that plaintiff should be damaged, be put to expense and lose customers, trade and profits which plaintiff lost by reason of said unlawful conspiracies, collusion, combinations and acts of defendant as aforesaid, and which defendant and said person or persons intended to gain, and did gain for themselves all to plaintiff's loss, damage and detriment in the amount of Thirty-Five Thousand ($35,000.00) Dollars actual damages, and defendant should be made to pay exemplary or punitive damages in the amount of Two Hundred Thousand ($200,000.00) Dollars.

Wherefore, plaintiff prays judgment against defendant under Count I for actual damages in the sum of Thirty-Five Thousand ($35,000.00) Dollars and exemplary or punitive damages in the sum of Two Hundred Thousand ($200,000.00) Dollars and for his costs incurred herein.

Count II.

17. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 to 16 inclusive of this complaint with the same force and effect as though each and every allegation in said paragraphs were set forth in full herein.

18. During all of said times the Publisher has entered into contracts, agreements or understandings and has unlawfully conspired and combined with a person or persons engaged in the newspaper carrier business pursuant to which the Publisher has fixed, regulated, controlled, established and maintained the retail prices at which the St.

Louis Globe-Democrat may be sold to subscribers for home delivery in the Greater Metropolitan St. Louis area including the area in which plaintiff's newspaper route is located.

19. Each and all of the aforesaid unlawful conspiracies and combinations entered into by and between the Publisher and a person or persons unknown to plaintiff were in restraint of the trade and commerce of distributing and selling the St. Louis Globe-Democrat for home delivery in the Greater Metropolitan St. Louis area, and were accomplished and brought about by contracts, agreements and understandings between the Publisher and a person or persons unknown to plaintiff and the acts done pursuant thereto were in violation of and contrary to Sections 1 and 2 of Title 15, U. S. C. A., all to plaintiff's damage in the amount of Thirty-Five ($35,000.00) Thousand Dollars, or treble said amount in the sum of One Hundred Five Thousand ($105,000.00) Dollars.

Wherefore, plaintiff prays judgment against defendant under Count II in the sum of One Hundred Five Thousand ($105,000.00) Dollars treble damages, plus a reasonable attorney's fee and for his costs incurred herein.

Plaintiff requests a trial by jury of all the issues herein pleaded.

BARTLEY, SIEGEL & BARTLEY,
By .....
130 S. Bemiston,
Clayton 5, Missouri,
PArkview 7-0922,
Attorneys for Plaintiff.

Exhibit "A".

St. Louis Globe-Democrat
Globe-Democrat Publishing Company
12th Blvd. at Delmar, St. Louis, Mo. 63101
GArfield 1-1212

May 20, 1964

Mr. Lester Albrecht
634 North Harrison
St. Louis, Missouri 63122

Dr. Mr. Albrecht:

The Globe-Democrat Publishing Company has received and referred to you a large number of complaints from customers in the territory you are servicing as a carrier, that you are charging subscribers more than the publisher's suggested retail prices.

The system we customarily follow of respecting, as exclusive, territories of our carriers prevents the normal effect of competition to keep prices down. In order to protect the reading public against artificially high prices in restraint of trade in the territories of overpricing carriers, we have expressed in our statement of policy the intention to compete in such territories by selling the Globe-Democrat at retail ourselves, or for resale by another carrier, at the lower prices in the overpriced territory.

In accordance with this policy, we are sending to each resident of your appointed territory the enclosed letter.

Yours very truly,

GLOBE-DEMOCRAT PUBLISHING COMPANY,

WALTER I. EVANS,
WALTER I. EVANS,
Circulation Director.

WIE/rr

Exhibit "B".

St. Louis Globe-Democrat
Globe-Democrat Publishing Company
12th Blvd. at Delmar, St. Louis, Mo. 63101
GArfield 1-1212

Dear Mr. Albrecht:

It has come to our attention that some Kirkwood area readers of the Globe-Democrat who subscribe to our paper through Lester J. Albrecht, 634 North Harrison, Kirkwood, Missouri, an independent merchant, are being charged more for the Globe-Democrat than our suggested retail price. The suggested retail rate for the Globe-Democrat, for delivery by carrier, is $1.60 per month for the daily paper, plus 20 cents for each issue of our Week-End paper. In addition, the premium on Reader Insurance is 10 cents per week, if desired.

If you are being charged more for the paper than our suggested retail rate, please advise us of this condition on the enclosed form and we will deliver the paper to you at the suggested retail rate.

If you are not a regular reader of our paper, we know that you will find the Globe-Democrat stimulating, informative and exciting. Please fill in the enclosed form and we will start service at once.

Sincerely

ST. LOUIS GLOBE-DEMOCRAT,
WALTER I. EVANS,
WALTER I. EVANS,
Circulation Director.

WIE/rr

Exhibit "C".

Deliver me the Globe-Democrat

☐ Daily ☐ Daily and Week-End

at your suggested retail price of $1.60 per month plus 20¢ for each Week-End issue.

I have been paying over suggested price ☐

I am a new subscriber ☐

Name .....

Address .....

Telephone .....

Answer.

(Filed in U. S. District Court August 26, 1964.)

For its answer defendant admits, denies and alleges as follows:

1. Admits the allegations of Paragraph 1 except the word "owning", which is denied insofar as this word may have been used in the sense that defendant owns any rights in such route which obliged the defendant to sell to plaintiff, or to sell to him exclusively, its newspapers.

2. Admits the allegations of Paragraph 2.

3. Admits the allegations of Paragraph 3.

4. Admits the allegations of Paragraph 4 except the allegation "without cost to itself", which is denied.

5. Admits the allegations of the first two lines of Paragraph 5, but denies the balance thereof.

6. With the qualification of the word "owner" expressed in Paragraph 1 supra, the allegations of Paragraph 6 are true with respect to the period of time preceding the filing of suit.

7. Admits the allegations of Paragraph 7.

8. Admits the allegations of Paragraph 8.

9. States that it does not know whether the stated amounts were uniformly charged by the plaintiff during the period mentioned, but admits that such amounts were charged in certain instances.

10. Admits the allegations of Paragraph 10.

11. Admits the allegations of Paragraph 11.

12. Admits the allegations of the first two lines of Paragraph 12, but denies the balance thereof.

13. Denies the allegations of Paragraph 13.

14. Denies the allegations of Paragraph 14 except the allegation that it has issued "stop orders" to plaintiff with respect to certain subscribers during the period mentioned to whom it has sold its newspapers at its suggested retail prices.

15. Denies the allegations of Paragraph 15.

16. Denies the allegations of Paragraph 16.

18. Denies the allegations of Paragraph 18.

19. Denies the allegations of Paragraph 19.

20. Further answering, defendant states that the allegations of plaintiff's petition are insufficient to constitute a claim upon which relief may be granted.

Wherefore, having fully answered, defendant prays to be dismissed with its costs.

HOCKER, GOODWIN & MacGREEVY,
and LON HOCKER,
LON HOCKER,
Attorneys for Defendant,
411 North Seventh Street,
St. Louis, Missouri 63101,
MAin 1-6100.

Supplemental Complaint.

(Filed in U. S. District Court .....)

Leave having been granted, Plaintiff, Lester J. Albrecht, files this as a Supplemental Complaint against the Herald Company, a corporation, d/b/a Globe-Democrat Publishing Company and shows that since the time when Plaintiff's Complaint was filed additional acts have been committed by the Defendant, to-wit:

1. That pursuant to and as a further part of the acts, conspiracies and combinations set forth in Counts I and II of the Complaint Defendant, The Herald Company, on August 21, 1964, notified Plaintiff by letter, marked Exhibit D, attached hereto and made a part hereof, that his relationship with The St. Louis Globe-Democrat as carrier was being terminated, and subsequently stated that on November 2, 1964, Defendant would cease selling Plaintiff newspapers; and that the delay in this termination was to give Plaintiff the opportunity to produce a substitute whose credit, experience and efficiency is satisfactory to Defendant; and that Plaintiff was, therefore, compelled and forced to sell his said newspaper route on or before November 2, 1964, at a price which was Twelve Thousand ($12,000.00) Dollars less than the fair market value of said newspaper route.

2. As a direct result of these further additional acts by the Defendant, which continues the unlawful and wrongful interference with Plaintiff's business and contractual relations set forth in the original Complaint in Count I, and which continues the unlawful and wrongful actions of resale price maintenance set forth in Count II of the original Complaint, Defendant further injured the Plaintiff in that he has lost the profits reasonably to be expected from the operation of his business because of the act of terminating his relationship of carrier with the St. Louis Globe-Democrat. As a result of this termi-

nation, Plaintiff has suffered damages of loss of profit of $13,000.00 annually for the reasonably foreseeable period during which he would have continued to operate this business of 8 years, being the length of time he has served as a carrier for the Globe-Democrat.

3. By reason of the above and foregoing, Plaintiff has suffered additional damages in the actual amount of $116,000.00, and is entitled under Count I to additional actual damages in the amount of $116,000.00, and under Count II, pursuant to Title 15, U. S. C. A., Section 15, to additional three-fold damages in the total amount of $348,000.00.

Wherefore, the Plaintiff prays judgment from Defendant for said amounts of $116,000.00 actual and $348,000.00 treble damages, over and above and in addition to the amounts prayed for in the Complaint, together with interest thereon, costs and attorneys' fees.

Motion of Plaintiff for Summary Judgment.

(Filed in U. S. District Court December 10, 1964.)

Comes now the Plaintiff, Lester J. Albrecht, and moves the Court, pursuant to the provisions of Rule 56, Federal Rules of Civil Procedure, for Summary Judgment in his favor against the Defendant in each of Counts I and II of his Complaint as supplemented by his Supplemental Complaint against the Defendant on the fact of liability, but not on the amount of damages. As grounds for this Motion, Plaintiff, Lester J. Albrecht, states that there is no genuine issue as to any material fact as to liability and shows to the Court that:

1. Plaintiff is an individual who was engaged in the business of operating a newspaper carrier route known

as St. Louis Globe-Democrat Route No. 99 in the County of St. Louis, Missouri, since June 1, 1956, as admitted in Paragraph 1 of Defendant's Answer.

2. Defendant is engaged in commerce as defined in Section 12 of Title 15 U. S. C. A. and is engaged in activities affecting commerce, as admitted in Paragraph 2 of Defendant's Answer.

3. Plaintiff, as the operator of said route, has from June 1, 1956, purchased St. Louis Globe-Democrat newspapers from the Publisher, at wholesale, without the right to return any newspapers so purchased, and sold said newspapers at retail to numerous customers within said Route No. 99 with whom Plaintiff had entered into separate agreements to deliver to them the St. Louis Globe-Democrat; and from the time he purchased said route Plaintiff has faithfully performed all of his duties as a carrier of Defendant's newspaper, has paid promptly all monies due Defendant and had established a substantial and profitable business, all as admitted in Paragraph 6 of Defendant's Answer.

4. The Publisher (Defendant and its predecessor, the Globe-Democrat Publishing Company) has followed a practice for many years up to the present time of publishing in its newspaper the Publisher's "suggested retail prices" for delivery by carriers of its newspapers to customers, as admitted in Paragraph 7 of Defendant's Answer.

5. The Publisher (Defendant and its Predecessor, the Globe Democrat Publishing Company) has followed a practice for many years up to the present time of requiring that carriers of Defendant's newspapers sell the St. Louis Globe-Democrat at prices no higher than the Publisher's "suggested retail prices", as admitted in Paragraph 8 of Defendant's Answer.

6. Defendant on May 20, 1964, sent a letter (Exhibit "A" to the Complaint) in which defendant stated that since Plaintiff was charging subscribers more than the Publisher's "suggested retail prices", Defendant was going to compete with Plaintiff by selling its newspaper at retail itself, or for resale by another carrier, as admitted in Paragraph 10 of Defendant's Answer.

7. In the letter of May 20, 1964 (Exhibit "A" to the Complaint) defendant further stated it was sending to each resident of Plaintiff's appointed territory an enclosed letter (Exhibit "B" to the Complaint) in which Defendant stated that Plaintiff, an independent merchant, was charging more than Defendants "suggested retail price", and enclosing a form card (Exhibit "C" to the Complaint) on which said persons were asked to advise Defendant (1) if they had been paying over the suggested retail price; or (2) if they were a new subscriber, and in either event, Defendant stated it would deliver its paper at the suggested retail price to such persons who returned said card to Defendant, all as admitted in Paragraph 11 of Defendant's Answer.

8. Since May 20, 1964, Defendant, its agents, servants and employees, have contacted Plaintiff's customers and potential customers within Plaintiff's said route by telephone, as admitted in Paragraph 12 of Defendant's Answer.

9. Defendant has issued "stop orders" to Plaintiff to stop delivering the St. Louis Globe-Democrat to certain subscribers during the period mentioned to whom Defendant has sold its newspapers at its suggested retail prices as admitted in Paragraph 14 of Defendant's Answer.

10. Depositions on behalf of the Plaintiff have been taken of the Defendant's Business Manager, Circulation Director, Circulation Manager and another employee, and

of George John Kroner, a newspaper carrier, and such depositions were subsequently filed in this Court.

11. These depositions, the Affidavit attached hereto and made a part hereof, and the pleadings establish that there is no present genuine issue of fact as to the material allegations in Counts I and II of Plaintiff's Complaint as supplemented by his Supplemental Complaint.

12. The uncontroverted facts show that the Defendant did interfere with Plaintiff's business and contractual relations by inducing customers of Plaintiff by means of letters, telephone calls and door-to-door visits to cease to purchase their newspaper from Plaintiff, and that these acts of Defendant did in fact cause a substantial number of plaintiff's customers to cease dealing with Plaintiff to his injury.

13. The uncontroverted facts show that this interference with Plaintiff's business and contractual relations was not pursuant to a lawful right of the Defendant to engage in and compete in the business of door-to-door delivery of newspapers, but that defendant in fact had no intention of engaging in the business of a newspaper carrier, had no equipment necessary for a newspaper carrier, no employees for carrying newspapers, did not in fact engage in the carrying of newspapers except for a very short time on an emergency basis, asserted no proprietary or possessory interest in serving the customers taken away from Plaintiff, and in fact gave without any charge whatever the customer list so obtained to another who was engaged in the carrier business, and Defendant's actions constituted only simulated competition and not competition in good faith, and, therefore, constituted an unlawful injury to the business and contractual relations of Plaintiff.

14. The uncontroverted facts shown that Defendant combined with various customers of Plaintiff and with

George John Kroner, a newspaper carrier, to coerce and induce Plaintiff to comply with the resale price policy of the Defendant by writing letters, making phone calls and door-to-door solicitation to inform these customers that Plaintiff was selling at a price above the suggested resale price of Defendant and to urge and encourage them to stop buying their newspaper from Plaintiff unless he complied with the resale price policy of Defendant, and by combining and agreeing with George John Kroner to deliver newspapers to the customers taken away from Plaintiff at Defendant's suggested retail price, by giving new starts phoned in to the Defendant which by practice and agreement would be turned over to Plaintiff, to George John Kroner, thereby preventing Plaintiff from receiving new business to which he was entitled and by stating that Defendant would refuse to turn over new starts to a purchaser from Plaintiff.

15. That the pleadings show the uncontrovertible fact that Defendant terminated its relationship with Plaintiff on August 21, 1964, refusing to deliver newspapers to Plaintiff after November 2, 1964, and the aforesaid letter and the depositions show that this refusal to deal was caused solely because Plaintiff commenced this lawsuit in order to protect himself against the unlawful actions of Defendant in combination with Plaintiff's customers and George John Kroner to compel Plaintiff to comply with the resale price policy of Defendant, and therefore, is an unlawful termination.

Oral Argument requested.

State of Missouri }
County of St. Louis } ss.

Comes now Lester J. Albrecht, upon his oath being duly sworn, deposes and says that he is the Plaintiff in the

law suit of Albrecht v. The Herald Company, being Case No. 64 C 302(2) now pending in the United States District Court, Eastern District of Missouri, Eastern Division; that in operating his newspaper carrier business as an independent merchant as set forth in the Complaint and Supplemental Complaint he exercised his independent judgment and was since about 1961 charging his customers $1.70 per month for the daily St. Louis Globe-Democrat; that he continued to charge said price of $1.70 per month from 1961 up to June 12, 1964, when he was compelled as a result of the actions and conduct of The Herald Company in sending out the letters of May 20, 1964, as set forth in paragraphs 10 and 11 of the Complaint, in soliciting his customers by telephone and otherwise, to advise his remaining customers by written notice that his price as of that date was $1.60 per month for the daily St. Louis Globe-Democrat; that he did not inform The Herald Company of his said reduction in price; that after he filed his said law suit against The Herald Company he was advised by it by letter dated August 21, 1964, that his relationship with it as carrier was terminated and that it would give him 60 days within which to produce a substitute; that The Herald Company subsequently extended the date on which it would cease selling newspapers to affiant from October 21, 1964, to November 2, 1964; that when affiant had agreed with another person upon the sale and sales price of affiant's said newspaper route The Herald Company advised affiant and said purchaser that the approximate 300 or more customers The Herald Company had taken away from Albrecht were no longer Albrecht's customers, but belonged to George John Kroner, and Albrecht could not, therefore, sell them; that The Herald Company would not recognize said purchaser as the exclusive carrier within Route 99, and would give all new start orders within Route 99 to George John Kroner and not to the purchaser from Albrecht; and that as a result of the aforesaid actions and conduct of The Herald Company, affiant

was compelled and forced to sell his said route as of November 2, 1964, and that the above and foregoing facts are true according to his best knowledge, information and belief.

LESTER J. ALBRECHT.

Subscribed and sworn to before me this 8th day of December, 1964.

BETTY L. LUTERAN,
Notary Public.

(Seal)

My Commission Expires Jan. 10, 1965.

This Act performed in the County of St. Louis which adjoins the City of St. Louis for which I am commissioned.

Order.

(Filed in U. S. District Court March 26, 1965.)

This matter is pending upon motion of the plaintiff for summary judgment as to the question of liability and on all issues except damages. The Court has been fully advised by briefs, oral arguments, affidavits, depositions and other exhibits which were filed in conjunction with the motion for summary judgment, and is of the opinion that there are material facts in dispute. Accordingly,

It Is Hereby Ordered that the plaintiff's motion for summary judgment be and hereby is overruled.

Dated this 26th day of March, 1965.

/s/ JAMES H. MEREDITH,
United States District Judge.

Stipulation.

(Filed in U. S. District Court May 4, 1965.)

Comes now Plaintiff, and hereby dismisses Count I of his Complaint by consent of Defendant.

BARTLEY, SIEGEL & BARTLEY
By DONALD S. SIEGEL,
and
GRAY L. DORSEY, by D. S.,
Attorneys for Plaintiff, Lester J. Albrecht.

HOCKER, GOODWIN & MacGREEVY,
By LON HOCKER,
Attorneys for Defendant,
The Herald Company.

Transcript of Trial.

* * * * * * * *

Plaintiff's Evidence.

LESTER J. ALBRECHT

was called as a witness, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination, by Mr. Siegel.

Q. Will you state your name, please? A. Lester J. Albrecht.

Q. Where do you live, Mr. Albrecht? A. 634 North Harrison, Kirkwood, Missouri.

Q. How long have you lived there? A. I have lived at that address the past twelve years. I lived about a block away from there thirteen years prior to that.

Q. That would be about twenty-six years you have lived in Kirkwood, is that right? A. Yes.

Q. With whom do you live at that address? A. With Mrs. Albrecht and my daughter, who is away at school.

Q. How long have you been married, Mr. Albrecht? A. Twenty-eight years.

Q. Do you have any other children? A. Yes, sir, two.

Q. Those children are not living with you, they are grown? A. Yes, sir.

Q. And living with their own families now? A. Yes, sir.

Q. How old are you, Mr. Albrecht? A. Fifty.

Q. Where were you born? A. Chesterfield, Missouri.

Q. What date? A. November 13th, 1913.

Q. What is your business or occupation? A. Independent newspaper carrier.

Q. For how long have you been a newspaper carrier? A. Since June 1, 1956.

Q. What did you do before you became a newspaper carrier? A. I was employed by Pevely Dairy Company.

Q. How long did you work for Pevely Dairy? A. Sixteen years.

Q. Sixteen years? A. Yes, sir.

Q. What kind of work did you do for them? A. Worked as a milkman, that would be retail service, delivering milk from home to home.

Q. What kind of work did you do before you went to work for Pevely? A. I was with the White Baking Company.

Q. What kind of work did you do for them? A. Retail sales, delivering bread and bakery products.

Q. For about how long? A. Approximately four years.

Q. Mr. Albrecht, what education do you have? A. Eighth grade.

Q. After you completed the eighth grade, what kind of work did you do? A. I worked on the farm; I was born and raised on the farm, and various odd jobs, if I could find some in the neighborhood.

Q. Now you testified you first became a newspaper carrier on June 1, 1956. From whom did you buy your newspaper route? A. Mr. Louis Tullman.

Q. How much did you pay Mr. Tullman for the route? A. Eleven thousand dollars.

Q. Was that all cash? A. I paid Mr. Tullman all cash. I had to borrow the money, but I paid him all cash.

Q. From whom did you borrow the money? A. Mr. William Hoch.

Q. Did you have to give any security in order to obtain the loan? A. Yes. I signed a note and he held a deed of trust on my home.

Q. Has that deed of trust been paid off? A. Yes, sir.

Q. What did you actually receive for the eleven thousand dollars you paid Mr. Tullman?

Mr. Hocker: Your Honor, please, I object to that.

The Court: Was there a contract of sale?

Mr. Siegel: I don't believe so, Your Honor.

Mr. Hocker: I will withdraw the objection, Your Honor.

The Court: Proceed.

Q. (By Mr. Siegel) Will you answer the question? A. Will you repeat the question, sir?

Q. (By Mr. Siegel) what did you actually receive for the eleven thousand dollars you paid Mr. Tullman? A. The names and addresses of subscribers, an old truck and a tying machine.

Q. When did the Globe-Democrat learn that you purchased the route 99 from Mr. Tullman? A. Mr. Tullman and I went down to have the route transferred from him to me.

Q. Was that right around June 1, 1956, or just prior? A. A few days prior to that; yes, sir.

Q. Do you remember the gentleman who interviewed you for the Globe? A. Mr. John Wendell.

Q. What did he say to you? A. He told me the duties of a newspaper carrier, that they were long hours, that they were seven days a week, and that the Globe-Democrat wanted their money for the papers that I purchased once a week and that they wanted the papers delivered in good condition and on time.

Q. Was anything said about pricing? A. No, sir.

Q. Did the Globe approve you as a carrier? A. Yes, sir.

Q. Thereafter was it necessary for you to obtain any further approval from the Globe-Democrat, or did you continue delivering newspapers on route 99? A. No, sir.

Q. As long as you paid your bills to the Globe and delivered your papers to the customers you just continued along indefinitely as the carrier, is that correct? A. Yes, sir.

Q. Was the route that you purchased designated by any number? A. Yes, sir.

Q. What is the number? A. 99.

Q. What territory was included within route 99? A. The boundaries were Manchester Road on the north, Argonne on the south, the Glendale city limits and Kirkwood city limits on the east. On the west side, Geyer Road, and then it had a jog to Essex, to Harrison Avenue.

Q. Does that describe generally the area that route 99 covers? A. Yes, sir.

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Q. Now Mr. Albrecht, will you explain the newspaper carrier business in connection with the operation of route 99, and your delivery of Globe-Democrat newspapers? Let me ask you first of all, from whom did you get the Globe-Democrat newspapers? A. Got them from the Globe-Democrat.

Q. What price did you have to pay the Globe-Democrat? A. Whatever price they billed me for.

Q. Was that what is known as the price that you were charged, what is known as the wholesale price? A. Yes, sir.

Q. You purchased these newspapers from the Globe and they became your newspapers, is that correct? A. Yes, sir.

Q. Let me ask you: You purchased a certain number of newspapers, let's say one thousand of the Globe-Democrat, but you were only able to deliver nine hundred fifty of those papers to customers on route 99. Could you return that extra fifty newspapers to the Globe-Democrat and get a credit or a refund for them? A. No, sir.

Q. So you had no right of return? A. That is right.

Q. The newspapers belong to you after you ordered and received them regardless of what you did or could do with them, is that correct? A. Yes, sir.

Q. Where would you receive the Globe-Democrat newspapers? A. We would pick them up at Manchester and Lindbergh, in front of Bettendorf's Market. We would get them from different deliveries. That was where we picked them up in the end, the last few years, but about the first two or three years we had to drive downtown to the plant to pick up the first group.

Q. By what means did you pick them up and transport them? A. At first I had this truck that I had bought from Mr. Tullman and I had, after that was no longer serviceable, I used a station wagon. At the end I used a Chevvy carry-all.

Q. This station wagon and this carry-all, these vehicles, whose were they? A. They were mine.

Q. You purchased them yourself? A. Yes, sir.

Q. Paid for them yourself? A. Yes, sir.

Q. And maintained them? A. Yes, sir.

Q. After you received the newspapers, did you do anything with them before they were delivered? A. They had to be rolled and tied or wired or something to hold them together, and if the weather was bad or we thought it

might rain, or if it would be bad before the customer would pick them up, we would have to wrap them.

Q. Did you employ any help to perform these tasks and deliver the papers? A. Yes.

Q. What would they do? A. Whatever I would instruct them to do. Mostly tie them and wrap them.

Q. Generally, however, did you have help or did you deliver the newspapers yourself and do all of these things yourself? A. Most of the time I did it myself with the exception of weekends and on Sundays.

Q. Ordinarily what time did you leave home to pick up the papers? A. 1:30 A. M.

Q. After the papers were tied, were they ready for delivery? A. If they didn't have to be wrapped.

Q. On what occasion would you have to wrap the newspapers? A. If it was raining or we would always check the weather report and if they were predicting rain, or if it were cloudy as though it were going to rain, or if we had the idea that it would rain, we would wrap them to see that the customers had good service and had a newspaper that was readable.

Q. After they were tied and were wrapped, what did you do then? A. They were delivered.

Q. You would travel in your truck over the route and throw the papers to the customers? A. Yes, sir, I would drive and wrap and throw the papers as I went along when I was working by myself, which was most of the time. I wouldn't wrap them ahead of time, I would wrap them as I was driving.

Q. Would you stop along the way and wrap some then go forward, or wrap and tie as you went along? A. I would wrap a few to start out with, then I could drive and throw them and wrap others as I went along.

Q. How long would it take you to deliver all the papers to your customers? A. It would depend on the time we would receive them. Sometimes we would have to wait,

then sometimes we would have to wrap them, but I was usually finished by 6:00 A. M.

Q. After you finished delivering the papers to your customers, was there any more work for you to perform in the carrier business? A. Oh, yes. There was the billing of the customers, the keeping of records, there were phone calls. You answered the phone, and answering the phone would bring sometimes stop orders and you take stop orders and start orders. You list those start orders and stop orders in the record book to see that your customer received credit for the days they were away.

Q. Did you have to on any occasion go out and make further deliveries by reason of some customer who didn't receive his paper? A. Yes, sir.

Q. You mentioned start and stop. Would you mind explaining just what a start order was? A. A start order is an order to deliver to a customer and a stop order is an order to stop service.

Q. From whom did you receive the orders to start and stop? A. From the customers that would call, and we would also receive notice from the Globe-Democrat that were sent out with our papers, and sometimes customers would call and notify us.

Q. Did you receive telephone calls from customers the Globe-Democrat Circulation Department would turn over to you? A. Yes, sir.

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Q. From the time you first became a carrier on route 99, up to May 20th, 1964, did anyone else sell and deliver Globe-Democrat newspapers on route 99? A. Yes.

Q. Who? Who were these other persons? A. They had the so-called branch manager, they had their men on the corner selling them, they had racks or boxes where the papers were placed, and they had them in grocery stores, drug stores, confectionery stores; anyone that

would let them put in two to three papers to a dozen, or any amount, and sell them for them, they would place them there.

Q. Did these branch men or corner men, or any of their employees make any deliveries to homes or stores also in the same manner that you delivered newspapers? A. Yes, they did.

Q. Now Mr. Albrecht, where were these boxes or racks located within route 99? A. They were along all the main thoroughfares, along the bus lines where the bus stops, and almost every grocery store had newspapers in it for sale, confectionery stores and drug stores.

Q. How far from any of these boxes or racks or these stores do you estimate your customers throughout route 99 were located? A. Oh, from one to five blocks.

Q. Did you have any competition on route 99 from all these stores, the drug stores and grocery stores and confectioneries and these boxes or racks or these dealers or their employees? A. Yes, sir.

Q. Now when you first started delivering in June, 1956, how many days a week did you deliver Globe-Democrat newspapers? A. Seven.

Q. Was there any change in that routine? A. Yes.

Q. How and when did it take place? A. Yes, they went to a six-day delivery. That I mean, I'm not real sure of the date, I believe it was September, 1962, or '63, I'm not real sure.

Q. In any event, did that have any effect on your business? A. Yes, sir.

Q. What effect did it have? A. Well, it caused us to lose one day's pay a week.

Q. Was that decision reached to go to this weekend edition and the replacement of Saturday's and Sunday's newspaper that had been sold, was that a joint decision with the paper carriers and the Globe-Democrat, or was that decision made by the Globe alone? A. That was made by the Globe alone.

Q. Did the carriers receive anything to compensate or adjust for the loss of that newspaper? A. No, sir.

Q. Do you recall what price you charged for the Globe-Democrat in 1956, the daily Globe-Democrat and the Sunday Globe-Democrat at the same time? A. Whatever the suggested retail price was. I believe at that time it was a dollar thirty cents a month.

Q. Was it the Globe-Democrat that established for you and other carriers whatever prices you and the other carriers paid for Globe-Democrat newspapers from 1956 through October 31st, 1964? A. Yes, sir.

Q. In 1956 did the Globe-Democrat have anything to do with fixing or establishing the retail prices which carriers charged their customers for delivering Globe-Democrat papers to their homes? A. Yes, sir.

Mr. Siegel: I was wondering if I might have permission of the Court at this point to read some admissions and answers which I thought might fit in chronologically here.

Mr. Hocker I have no objection, Your Honor.

The Court: Very well. Proceed.

Mr. Siegel: I would like to read, if the Court please, from paragraph 7 of the Complaint and the response in the answer thereto.

Mr. Hocker: Just a minute. Let me find that.

Mr. Siegel: Paragraph 7.

Mr. Hocker: Okay.

Mr. Siegel: (Reading) "The publisher—" and I think we can agree that that means the defendant as it has been identified in the Complaint, Mr. Hocker?

Mr. Hocker: Yes.

Mr. Siegel: All right. With this agreement on that, (reading) "The publisher has followed a practice for many

years up to the present time of publishing in its newspaper the publisher's suggested retail prices for delivery by carriers of its newspapers to customers.

The answer to paragraph 7 admits the allegations of paragraph 7.

Paragraph 8 (reading) The publisher has followed a practice of many years up to the present time of requiring that carriers of defendant's newspaper sell the St. Louis Globe-Democrat to subscribers at prices no higher than the publisher's suggested retail prices.

In paragraph 8 of the answer, the defendant admits the allegations in paragraph 8 of the Complaint.

I wonder if we couldn't also agree on this, that is stipulated that that may be received in evidence, Your Honor, that is an ad that is published in the daily—daily in the St. Louis Globe-Democrat newspaper setting out the home delivery rate for the prices that, the retail prices that would be charged.

Mr. Hocker: Why don't you mark it as an exhibit?

Mr. Siegel: Will you mark this Plaintiff's Exhibit 1.

(Thereupon, the document above referred to was marked by the reporter for identification as Plaintiff's Exhibit 1.)

Mr. Siegel: May it be stipulated that what has been marked as Plaintiff's Exhibit No. 1 may be received in evidence?

The Court: Exhibit No. 1 may be admitted.

Mr. Siegel: Would you also mark these?

The Court: Will you identify Plaintiff's Exhibit No. 1 for the record.

Mr. Siegel: Plaintiff's Exhibit No. 1 is an ad that appeared, or appears daily in the St. Louis Globe-Democrat and I think we can stipulate that this same ad

would appear and did appear regularly, I think, from about 1961 up to the present time. It provides for a home delivery rate of daily and weekend Globes of two dollars and forty cents a month for a four weekend month. If I may, I think I can simply explain how that two dollars and forty cents is arrived at. I believe that covers four weekends at twenty cents each, or eighty cents, plus a dollar sixty cents for the suggested retail price for the dailies, making a total of two dollars and forty cents a month. Is that correct, Lon?

Mr. Hocker: Yes.

* * * * * * * *

Mr. Siegel: Will you mark these Plaintiff's Exhibits 2, 3 and 4.

(Thereupon, the documents above referred to were marked by the reporter for identification as Plaintiff's Exhibits 2, 3 and 4 respectively.)

Q. (By Mr. Siegel) Mr. Albrecht, how did defendant notify you of changes in the wholesale and retail rates? A. By mail; by letter.

Q. I will show you what has been marked Plaintiff's Exhibit 2, 3 and 4, and hand you those and ask you if you will identify what those exhibits purport to be, starting with them in their numerical order.

* * * * * * * *

Q. (By Mr. Siegel) All right, Mr. Albrecht, will you first state what Plaintiff's Exhibit 2 purports to be. A. That is the notice that I received that with the effective date of July 23rd that the wholesale rate to the carriers would be four dollars and forty cents per hundred.

Q. From whom did you receive that letter? A. The Globe-Democrat; it is signed by Walter I. Evans.

Q. What is the date of that letter? A. July 19th, 1962.

Q. Can you identify Plaintiff's Exhibit 3? A. Yes, sir. That is the notice that the suggested advertised retail price of the weekend Globe-Democrat will be increased to twenty cents per copy. It formerly was fifteen cents prior to this.

Q. From whom was that letter? A. This was also from the Globe with Mr. Walter I. Evans' signature.

Q. What is the date of that letter? A. October 18, 1963.

Q. All right. Plaintiff's Exhibit 4, will you identify that? A. That is a notice dated July 15th, 1964, non-subscribers will be offered delivery of the daily or daily and weekend Globe-Democrat for a three months' period of half price provided they take a reader insurance policy. This is one of their promotion letters and they used telephone solicitation to contact the people with.

Q. What is the date of that letter? A. July 15th, 1964.

Q. Does that letter say anything about the retail price at which those papers should be sold by carriers? A. Unlike past campaigns of this nature, there will not be a free period and a charge period. You will start billing immediately but at half the regular rate.

Mr. Siegel: I see. All right. I would like to offer Plaintiff's Exhibits 2, 3 and 4 in evidence.

Mr. Hocker: No objection.

The Court: They may be received.

* * * * * * *

Q. Mr. Albrecht, were you employed by the Globe-Democrat and thereafter by The Herald Company during any of this period of time while you were delivering Globe-Democrat newspapers from June 1, 1956, through October 31, 1964? A. No, sir.

Q. Were you then in business for yourself as a newspaper carrier during this period of time? A. Yes, sir.

Q. Were you the sole proprietor or owner of that carrier business? A. Yes, sir.

Q. Did you employ your own help when you needed it? A. Yes, sir.

Q. Did you buy and use your own delivery and other equipment in making deliveries of the Globe-Democrat newspaper? A. Yes, sir.

Q. Where does your profit come from in the newspaper carrier business? A. The difference between the wholesale rate we paid and the price that the cutsomers paid us less expenses, was our profit.

Q. What kind of expenses did you have in the carrier business? A. There was gas and oil, upkeep of the truck and equipment; there was string, wire, delivery bills, postage, telephone bills and repairs on the truck, tires, employees, any employees that we employed had to be paid. There was a tax service for income tax purposes, there was insurance.

Q. Did you have to collect any of the—— A. Collecting agencies for customers that we had not or could not collect from.

Q. Is that for the most part the kind of expenses that you would have in this carrier business? A. Yes, sir.

Q. By the way, did you also deliver the Post-Dispatch for the Pulitzer Publishing Company for a time? A. On Sunday only.

Q. Aside from any difference in the wholesale and retail price, was there any difference between the duties and kind of operation as between a carrier for the Post-Dispatch and a carrier for the Globe-Democrat? A. No, sir.

Q. In 1961, what was the retail price that you charged to your customers within route 99? A. The first part, I think, was a dollar forty cents.

Q. At that time what was the suggested, the defendant's suggested retail price? A. One dollar thirty cents.

Q. Did those change in 1961? A. Yes. It changed to a dollar sixty cents, was the defendant's suggested retail price, and I charged a dollar seventy cents.

Q. Will you state what the occasion was for charging more than the defendant's suggested retail price?

* * * * * * *

A. They had, the defendant had changed their prices and that is the reason that the price change was made; in fact, in the beginning of 1961 we were getting the price of the week-end paper, or Sunday paper at that time was twenty cents. It was reduced to ten cents per copy and that also cut our profits by approximately two and a half cents per copy of each Sunday paper.

Q. What did—— A. The price of a dollar sixty—that is the time that the defendant had changed its wholesale rates and its retail rates or suggested advertised prices.

Q. Did you make this change in price yourself as an independent merchant? A. Yes.

* * * * * * *

Q. (By Mr. Siegel) In any event, what did you do with respect to the price? A. I charged the price that I had decided to charge. I did not go along with the defendant's suggested retail price. I did on the weekend copies, the weekend issues, I did charge their suggested rates, but not on the daily.

Q. Was this a decision that you reached yourself? A. Yes, sir.

Q. And based on your own independent judgment? A. Yes, sir.

Q. Did you charge all customers in excess of defendant's suggested retail price for the dailies? A. No, sir. I did not charge anyone the excessive price if they paid in advance.

Q. Were there any of your customers within route 99 who did pay in advance? A. Yes, sir.

Q. Do you recall any of their names? A. There was Mr. Reddington, Mrs. Bayer, Mr. Lear and Diercker.

Q. What price did you charge them for the dailies? A. The suggested, defendant's suggested retail price.

Q. When did your customers ordinarily pay their monthly bills to you? A. Some paid once a month, some every two months, some three months, some four months, some six months, some as long as a year, some never did pay.

Q. Did anyone from the Globe-Democrat ever call you about charging more than the defendant's suggested retail price? A. Yes, sir. Mr. Evans did.

Q. When did he first call you? A. In 1961.

Q. What did he say, and what did you say? A. He said that he had reference that I was charging more than the suggested retail price and that the Globe-Democrat could not tolerate that, that they had to control the price, and I had to charge the suggested retail price.

Q. Did you reach any understanding with him at that time? A. No, sir.

Q. Did you continue to charge more than the defendant's suggested retail price for delivering Globe-Democrat newspapers to your customers? A. Yes, sir.

Q. Did any other carrier charge more than defendant's suggested retail price? A. Yes, sir.

Q. Did Mr. Evans thereafter call you any further with respect to your charging more than the defendant's suggested retail price? A. Yes, sir, he did.

Q. When did he next contact you? A. The next time he contacted me was by phone. He suggested, or he said I understand you are charging more than the suggested retail price. He said we cannot put up with it. You will have to charge the suggested retail price. At that time I told Mr. Evans I was an independent merchant, that I was not an employee of the Globe-Democrat, that I bought the newspapers from them, paid them cash for them. I had to deliver them, bill them, see that all expense for operation to get them to the readers was taken care of, and they paid no old-age pension or anything that way. We had no vacation, they paid nothing to us, to the car-

riers as employees, so therefore I told him I thought I was——

Mr. Hocker: Object to what he thought, Your Honor.

The Court: Sustained. You may testify what you said, not what you thought.

Q. (By Mr. Siegel) What did you say, did you say anything further to him during that conversation? A. No, sir. Mr. Evans hung up.

Q. He hung up on you? A. Yes, sir.

The Court: When was this conversation, you didn't say when this was. This second conversation.

A. I don't remember the exact date, but it was, to the best of my knowledge, in 1962.

Q. (By Mr. Siegel) Did you ever receive a letter from Mr. Evans about the price you were charging? A. Yes, sir.

Mr. Siegel: Will you mark this Plaintiff's Exhibit 5.

(Thereupon, the document above referred to was marked by the reporter for identification as Plaintiff's Exhibit No. 5.)

Q. (By Mr. Siegel) Mr. Albrecht, I will show you what has been marked Plaintiff's Exhibit 5, and ask you if you can identify what this exhibit purports to be. A. Yes, sir.

Q. What is that? Is that the letter you received from Mr. Evans? A. This is the letter that I received from Mr. Evans.

Q. What is the date? A. June 1st, 1962.

Mr. Siegel: I would like to offer this letter in evidence, Your Honor.

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The Court: There is no objection to this?

Mr. Hocker: No, sir. No objection.

The Court: It may be received.

Q. (By Mr. Siegel) Mr. Albrecht, will you read that letter? A. (Reading) Mr. Lester Albrecht, 634 North Harrison, Kirkwood 22, Missouri. Dear Mr. Albrecht: From the enclosed notices it appears that you are charging a dollar seventy cents per month for the daily Globe-Democrat in spite of our published announcement that the price is a dollar sixty cents.

It is the policy of the Globe-Democrat not to deal with carriers who charge their subscribers more than the published rates, and if after this warning you persist in charging at the higher rate, we will take whatever legal steps appear to be necessary to effectuate our position. Yours very truly, Globe-Democrat Publishing Company, Walter I. Evans, Circulation Director.

That is dated June 1st, 1962.

Q. Now after you received that letter, Mr. Albrecht, did you have any meeting with Mr. Evans? A. Yes, sir. And with Mr. Bauman.

Q. About when did that meeting take place? A. Shortly after I had received that letter.

Q. Where did that meeting take place? A. In Mr. Evans' office at the Globe-Democrat.

Q. What did you say and what did Mr. Evans and Mr. Bauman say at that meeting? A. Mr. Evans told me at that time that he would not talk to me unless in the presence of Mr. Bauman, so he called Mr. Bauman in and I don't recall just what the first words were said——

Mr. Hocker: Let me interrupt one second. I think it would be well for Mr. Bauman to hear what this man says, if you wait a minute while I get him.

Mr. Siegel: That is all right.

(At this point Mr. Hocker stepped outside the court room and brought Mr. Bauman back who had left the court room.)

Q. (By Mr. Siegel) Mr. Albrecht, did Mr. Evans identify who Mr. Bauman was? A. Yes, sir.

Q. Who did he say he was? A. Mr. Bauman.

Q. Did he indicate what office or what position or connection he had? A. The business manager.

Q. Did he state whether or not he was an attorney? A. Yes, sir.

Q. All right. What conversation followed after that? A. Mr. Bauman asked what shall we talk about. I said I am here for one reason and that is because I received this letter with Mr. Evans' signature on it. Mr. Bauman then stated—they said that they would have to control the suggested retail prices, they would have to control the prices. That unless they did some carrier may charge—they could charge whatever they wanted, they could charge ten dollars a month if the customer was willing to pay it, and of course I told him at that time that it would be a little ridiculous to try to charge ten dollars a month for the delivery of a newspaper. He said well, at the same time they could not tell me what to charge, but if I did not charge their suggested retail price that they would not have to do business with me. I then asked him if that wasn't a different interpretation of telling me what I had to charge. It was just using different words. In other words, to charge that suggested retail price or else.

Q. What did he say, if anything? A. Mr. Evans or Mr. Bauman, neither one, gave me an answer to that.

Q. Was there any further conversation that took place at that time? A. They told me at that time, that is, Mr. Evans said I would advise you not to use that bill with the dollar seventy cents printed on it, and I had been using that bill, that I should never use that bill any more to any of my customers.

Q. Are you referring to the bill that you had the price of a dollar seventy cents printed thereon? A. Yes, sir.

Q. Was there any further conversation at that meeting? A. That—to my knowledge, no.

Q. All right. After that meeting, did you continue to charge the price that you decided in your own judgment as an independent merchant to charge your customers? A. Yes, sir.

Q. From the time, Mr. Albrecht, you started charging the retail price that you determined up to May 20th, 1964, did you, to your knowledge, lose any customers as a result of the price that you charged? A. Yes, a few.

Q. Can you state about how many? A. Half a dozen.

Q. Over the three-year period, from 1961 into 1964? A. About half a dozen.

Q. How many customers did you have on route 99 on May 20th, 1964? A. Twelve hundred one dailies, eleven hundred eighty-nine weekends.

Q. Now as of May 29, 1964, you had been engaged in the carrier business delivering Globe-Democrat papers for almost exactly eight years, had you not? A. Yes, sir.

Q. Over this period of time had you performed all your duties as a carrier of the Globe-Democrat paper? A. Yes, sir.

Q. Had you paid promptly all the money to defendant? A. Yes, sir.

Q. Did you have an investment in delivery and other equipment? A. Yes, sir.

Q. Had you built up patronage and goodwill on route 99? A. Yes, sir.

Q. Did you expect to continue to operate that paper route? A. Yes, sir.

* * * * * * * *

Mr. Siegel: I would like to offer Plaintiff's Exhibits 6, 7 and 8 in evidence, Your Honor.

Mr. Hocker: No objection, Your Honor.

The Court: They may be received.

Q. (By Mr. Siegel) Mr. Albrecht, would you mind reading if you will, aloud, Plaintiff's Exhibits 6, 7 and 8? A. (Reading) May 20, 1964. Mr. Lester Albrecht. 634 North Harrison, St. Louis, Missouri 63122. Dear Mr. Albrecht: The Globe-Democrat Publishing Company has received and referred to you a large number of complaints from customers in the territory you are servicing as a carrier that you are charging subscribers more than the publisher's suggested retail price.

The system we customarily follow of respecting as exclusive territories of our carriers prevents the normal effect of competition to keep prices down. In order to protect the reading public against artificially high prices in restraint of trade in the territories of over-pricing carriers, we have expressed in our statement of policy the intention to compete in such territories by selling the Globe-Democrat at retail ourselves or for resale by another carrier at the lower prices in the over-priced territory.

In accordance with this policy, we are sending to each resident of your appointed territory the enclosed letter. Yours very truly, Globe-Democrat Publishing Company, Walter I. Evans, Circulation Director.

Q. Now will you read Plaintiff's Exhibit 7 and let me, before you do that, ask you do you know whether this was a letter that went out to all the residents of your territory within route 99? A. Exhibit No. 7?

Q. Yes, sir. A. Yes, it is.

Q. As a matter of fact, did that letter go out to your knowledge to more than the persons who were customers of yours within route 99? A. Yes, sir.

Q. Now let me ask you: there is some reference in Plaintiff's Exhibit 6 to a large number of customers' complaints about which the defendant had advised you, how many complaints did defendant advise you that it had with respect to your pricing policy? A. I don't know the exact number; probably half a dozen.

Q. Will you proceed to read Plaintiff's Exhibit 7. A. (Reading) Dear Mr. Albrecht: It has come to our attention that some Kirkwood area readers of the Globe-Democrat who subscribe to our paper through Lester J. Albrecht, 634 North Harrison, Kirkwood, Missouri, an independent merchant, are being charged more for the Globe-Democrat than our suggested retail price. The suggested retail rate for the Globe-Democrat for delivery by carrier is a dollar sixty cents per month for the daily paper, plus twenty cents for each issue of our weekend paper. In addition, the premium on reader insurance is ten cents per week, if desired.

If you are being charged more for the paper than our suggested retail rate, please advise us of this condition on the enclosed form and we will deliver the paper to you at the suggested retail rate.

If you are not a regular reader of our paper, we know that you will find the Globe-Democrat stimulating, informative, and exciting. Please fill in the enclosed form and we will start service at once. Sincerely, St. Louis Globe-Democrat, Walter I. Evans, Circulation Director.

Q. And this letter, Plaintiff's Exhibit 7, was the letter that was sent out to all the residents within your territory, route 99, is that correct? A. Yes, sir.

Q. Now read what is stated on Plaintiff's Exhibit 8. A. (Reading) Deliver me the Globe-Democrat, then it has a little box beside it, the word daily; another little box, the words daily and weekend, at your suggested retail price of one dollar sixty cents per month with twenty cents for each weekend issue.

I have been paying over suggested price. Then a little box to check.

I am a new subscriber, with a little box to check. Then it has name, address, telephone.

Q. Was there a box to check as to whether or not the subscriber, or your customers, were paying over the defendant's suggested retail price? A. Yes, sir.

Q. All right. Now after those letters of May 20th, 1964, were sent out to you and to all the residents of your territory, together with that card, what happened next? Did you hear from any of your customers? A. I heard from a lot of them. The phone would ring and a lot of people calling cursed me, called me a cheat and a thief, and a lot of the people that I knew for some twenty years, would walk by me, wouldn't even talk to me. I think on the morning of the 25th following that letter, I received stop orders from the Globe-Democrat along with my newspapers, to stop delivery of the newspaper to the customers. I acknowledged those stops for two or three days, then I started getting notices to stop newspapers from people that were not even customers of mine. After I got them I couldn't acknowledge them anymore, because they were telling me to stop newspapers for Mr. and Mrs. So-and-So, and I wasn't even delivering a newspaper to them.

Q. Did any of your customers and acquaintances who received those letters speak or act toward you any differently in any other way than you have previously testified about after May 20th, 1964? A. Yes, a lot of them I even noticed in church. I would sit down in church on Sunday morning and people got up and moved out of the pew I was sitting in and moved to another one.

Q. Did you—you stated that you received some stop orders shortly after, or some few days after May 21st, 1964, for how long did you continue to receive an unusual amount of stop orders, if this was an unusual amount? A. This is a very unusual amount. I did for quite some time. After the letter, then the telephone soliciting followed, the door-to-door soliciting followed to get my customers and I was continuously losing customers.

Q. Will you describe any other effects that these letters that the defendant sent out to your customers had on your carrier business? A. Well, it took some three hundred-odd customers that I had, and that caused me

a loss of profit and my expenses were the same because these customers were—there would be one here I would deliver to, maybe they would telephone me and I still had to cover the same territory, I had to cover the same amount of mileage and territory and my expenses continued to be the same.

Q. I see. There would only be one here and there and you would have to cover the same territory that you had previously been covering before the letter of May 20th, is that correct? A. Yes, sir.

Q. Do you know who began delivering Globe-Democrat newspapers to those persons from whom you had received stop orders from the defendant? A. An employee of the Globe-Democrat, Mr. Boyd.

Q. Did you actually observe him delivering newspapers to your customers on route 99? A. Yes, sir.

Q. How would that happen that you observed him doing that? A. As I explained, we were both covering the same territory. He didn't go exactly the same way I did, but we would meet in different places. I would pass him on the street. Sometimes he would be going the opposite direction, sometimes he would be coming, and sometimes I would be coming in back of him; and newspapers were also delivered by Mr. Dorway.

Q. Dorway? I believe that is D-o-r—Is that a single "o" or a double "o"? A. Single "o".

Q. D-o-r-w-a-y. He is an employee of the Globe-Democrat, too? A. Yes, sir.

Q. Is he some official in the Circulation Department? A. I think he has some title.

Q. Now I think you mentioned that the defendant engaged in some additional conduct as a result of which you lost more customers. You mentioned telephone and door-to-door solicitation. Do you know who did the telephone solicitation? A. The Milne Service.

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Q. (By Mr. Siegel) Do you know whether or not the defendant through Milne Sales Circulation Service, Incorporated, engaged in any door-to-door solicitation of your customers within route 99? A. Yes, sir.

Q. Do you know that of your own personal knowledge? A. I was told that.

Q. All right. Did you continue—for how long did you continue receiving stop orders from the defendant for customers, your customers within route 99? A. As long as I—until I sold the route.

* * * * * * *

Mr. Siegel: Will you mark this Plaintiff's Exhibit 9.

(Thereupon, the document above referred to was marked by the reporter for identification as Plaintiff's Exhibit No. 9.)

Mr. Hocker: That whole batch of papers is Exhibit 9?

Mr. Siegel: Yes.

Q. (By Mr. Siegel) Mr. Albrecht, I will hand you what has been marked Plaintiff's Exhibit 9, and ask you if you will identify what the top sheet thereon purports to be. A. This is a list of stop orders that was sent to me by the Globe-Democrat. They were not sent to me in a form such as this, they were individual sheets with each individual customer's name and address, and they stopped the subscriptions.

Q. Is that the letter that appears on the top thereof? A. Yes, it is.

Q. What is the date of that letter? A. July 1st, 1964, and it is signed by Mr. Walter I. Evans, Circulation Director, St. Louis Globe-Democrat.

* * * * * * *

Q. (By Mr. Siegel) To whom is that letter addressed? A. Mr. Lester J. Albrecht.

Q. Did you receive that letter, Mr. Albrecht? A. Yes, sir, I did, by special delivery.

Q. All right. A. With the group, the whole thing as a group.

Q. Will you identify what those enclosures that you received with that letter are? A. Those are names, a list of the names and addresses with the dates listed in front, the name and address of the customers that they had previously sent me stop orders on.

Q. Was that a list then of all the stop orders that had been sent to you by the defendant asking you to stop delivering to all those customers up to that date of that letter? A. Yes, sir, it is.

Mr. Siegel: I will ask that Plaintiff's Exhibit 9 be received in evidence, Your Honor.

Mr. Hocker: No objection.

The Court: It may be received.

Q. (By Mr. Siegel) Let me ask you another question on this Exhibit 9, Mr. Albrecht. Will you look at that exhibit or the enclosures therein and state what is the first date that a stop order or a number of stop orders were sent to you by the defendant on your customers? A. May 25th, 1964.

Q. Now did those stop orders continue after that? A. Yes.

Q. Each day as shown, or can you indicate or state that from that exhibit? A. These are the ones that they are dated May 25th, 1964. There is one, two, two and a portion of another page dated May 26th, 1964, and May the 27th, and there is one May 28th, June 2nd, June 3rd, June 4th, June 6th, June the—there is June the 5th prior to that. June 6th, and another one for June 5th; there is another one for June 6th.

Q. Well—— A. June 8th.

Q. Let me interrupt you for a moment, Mr. Albrecht. Will you just glance at those and state whether or not those stop orders continued every day or just about every day, during the month of June, 1964, and up until what date? A. Yes, sir. This date here is including June the 30th. There is a bad job on this, part of it is hard to read. July 27th was the last on this list.

Q. Where—— A. There were more than that; that was the date that this list was sent to me.

Q. I notice on this list on this last one from where you got the date July the 7th is later than the date of the letter. Were there some additional stops that you received after this letter of July 1st? A. Yes, sir.

Q. Thank you. Now did the same employees of the defendant that you have previously identified, Mr. Albrecht, continue to deliver Globe-Democrat papers to the customers that you had previously been serving and from whom you had received stop orders from the defendant? A. Yes, sir.

Q. Do you know for how long they continued to deliver those Globe newspapers to the customers of yours that had been taking from you? A. Not the exact date, but it was some time in July, I believe, that Mr. Kroner had started to deliver.

Q. Now—— A. It is possible it could have been in August.

Q. Do you know who Mr. Kroner is? A. Mr. Kroner is a—he is another carrier whom the Globe-Democrat gave these customers of mine to.

Q. Now during the month of June, did you take any action as a result of defendant's letters, telephone and door-to-door solicitation with respect to your price? A. Yes, sir, I did.

Q. What did you do, and why? A. I lowered my price to their suggested retail price. I gave notice to all my customers because of the pressure that the Globe-Democrat

was putting on me, I definitely could not stay in business as I——

* * * * * * *

Q. (By Mr. Siegel) Now this price that you reduced this to, did you communicate to your customers anything in writing with respect to what your price was going to be from whatever date it was that you so notified your customers? A. Yes, sir.

Mr. Siegel: Will you mark this Plaintiff's Exhibit 10.

(Thereupon, the document above referred to was marked by the reporter for identification as Plaintiff's Exhibit 10.)

Q. (By Mr. Siegel) Mr. Albrecht, I will show you what has been marked Plaintiff's Exhibit 10, and ask if you will identify what that document purports to be? A. That is the price list that I distributed to my customers.

Q. What is the price indicated on Plaintiff's Exhibit 10 for the daily, per month? A. Daily, one price, one dollar sixty cents per month. Weekends, twenty cents per copy, which was the same as the defendant's suggested retail price.

Mr. Siegel: I would like to offer Plaintiff's Exhibit 10 in evidence, Your Honor, please.

The Court: Any objection?

Mr. Hocker: No objection.

The Court: It may be received.

Q. (By Mr. Siegel) Now Mr. Albrecht, did you meet with any representatives of defendant after May 20th, 1964, and before August 21, 1964? A. Yes, sir, I did. I met with Mr. Bauman.

Q. What did he say?

The Court: When did you meet with Mr. Bauman? Identify the time and place.

Q. (By Mr. Siegel) All right. Can you identify where you met with Mr. Bauman? A. I met with Mr. Bauman at his office in the Globe-Democrat Building.

Q. Do you recall the date? A. July the—I am not real sure, I believe it was July the 27th.

Q. 1964? A. 1964.

Q. What did Mr. Bauman say to you? A. Mr. Bauman said that the Globe-Democrat was not in the newspaper carrier business, that it does not want to be in the newspaper carrier business, and that they would be happy if I would take these customers back and deliver them the newspapers to them so long as I charged the suggested retail price.

Q. Was there anything further said at that meeting that you can recall? A. Not offhand that I can recall.

Q. Now after that meeting, what did you do next? A. I made an appointment with you, Mr. Siegel, here, to file suit against the defendant for the damage that I had sustained through them delivering to my customers and taking these customers away.

Q. Now Mr. Albrecht, after that lawsuit was filed, what happened next? A. I received a notice that I was being terminated as a carrier.

Q. Who did you receive this notice from? A. I received a copy of it from you that they were terminating me as a carrier and that I would have sixty days to find a buyer for my route.

* * * * * * *

Q. (By Mr. Siegel) Mr. Albrecht, I will hand you what has been marked Plaintiff's Exhibit 11, and ask you if you can identify that document, what it purports to be? A. Yes. This is a letter dated August 20th, 1964, notifying me that they were terminating me as a carrier.

Q. Who signed that letter, Mr. Albrecht? A. Walter I. Evans, Circulation Director.

Q. Does that letter indicate how many days or on what date you were to be terminated? A. It says sixty days.

Q. Sixty days? A. Sixty days from the date, which would be October 21st.

The Court: Now is October the 21st the day of termination or is that the date of the letter? A. The date of the letter is August 21st. Here at the bottom it says we shall cease selling you newspapers on October 21st, 1964. In the meantime, we will be ready to interview any substitute you may wish to produce.

Q. (By Mr. Siegel) Does that letter indicate that you would be terminated immediately as to the date of that letter?

* * * * * * * *

A. (Reading) August 21st, 1964. Mr. Lester Albrecht. 634 North Harrison, St. Louis, Missouri 63122. Dear Mr. Albrecht: We have received a copy of the Complaint which you have filed in the U. S. District Court asking damages from us in the amount of three hundred forty thousand dollars.

It seems apparent that the prosecution of this action is clearly inimical to the purpose for which your appointment as carrier was made and you are hereby notified that your appointment as carrier is terminated.

However, in accordance with our statement of policy, we will nevertheless give you the opportunity of producing a substitute whose credit, experience and efficiency is satisfactory to us, and we will not object to his appointment on the gound that he may be paying you in connection therewith. Under the circumstances, with the lawsuit pending, we believe that sixty days is a reasonable time for this purpose.

Accordingly, we shall cease selling you newspapers on October 21st, 1964. In the meantime, we will be ready to interview any substitute you may wish to produce. Yours very truly, Walter I. Evans, Circulation Director.

Q. Then the defendant gave you sixty days, not ninety

days, within which to sell your route, isn't that correct? A. Right.

Q. Did the defendant give you an additional extension of thirty days over that sixty days within which to sell your route? A. No, sir.

Q. How much extension of time was given from the date of October 21, 1964? A. To the end of October, 1964.

Q. Did you make that request? A. Yes, sir, I did.

Q. Why did you make that request? A. To simplify the billing of the customers. It would make a lot of extra work for me. It would make a lot—making out the bills for part of a month would make a lot of extra work for the man who was appointed to bill for those few days and it would also confuse the customers as to what days they were to pay me and for what days their records would be that they would have to pay this man.

* * * * * * *

Q. (By Mr. Siegel) Do carriers bill monthly? Did you bill monthly? A. I billed monthly, yes, sir.

Q. Now, I don't believe I asked you, Mr. Albrecht, with respect to Plaintiff's Exhibit 10 as to when you notified your customers that you were reducing your price to one dollar sixty cents per month for the daily Globe. A. It was on June the 12th. The price was retroactive to June the 1st.

Q. Thank you. Now, after you received that notice that the defendant was going to cease selling you newspapers as of October 21st, 1964, did you make any attempt to sell your route 99? A. Yes, sir, I did, I advertised it.

Q. Did you receive any offers? A. Yes, sir, I did.

Q. What was the first offer you received? A. Mr. Max Horing.

Q. I believe that is H-o-r-i-n-g? A. He offered me seventeen thousand dollars.

Q. He offered you seventeen thousand then? A. Yes, sir, seventeen thousand dollars.

Q. Did you accept that offer? A. I did not at that time accept it. Mr. Horing said that——

Q. Don't tell us what Mr. Horing said. I just asked you if you accepted the offer. A. I did not.

Q. Did you receive any further offers? A. Yes, sir, I did.

Q. From whom did you receive another offer? A. Mr. Schwarzenbach.

Q. I believe that is S-c-h-w-a-r-z-e-n-b-a-c-h? You received another offer from Mr. Eugene Schwarzenbach? A. Yes, sir.

Q. What was the amount of that offer? A. Twenty-four thousand dollars.

Q. Did you accept that offer? A. Yes.

* * * * * * * *

Q. (By Mr. Siegel) Did Mr. Schwarzenbach make an oral offer to you orally? A. Yes, sir.

Q. What was the amount of that offer, Mr. Albrecht? A. Twenty-four thousand dollars.

Q. Did you orally tell him that you accepted that offer or not? A. Yes, sir, I did.

Q. You did what? A. I did accept it.

Q. Now was it then necessary to obtain the approval of the Globe-Democrat of Mr. Schwarzenbach in order to consummate the arrangement with him? A. Yes, sir.

Q. Did you make any arrangements to meet with any representative of the defendant? A. Yes, sir, I did.

Q. Do you recall on what date you met with them? A. September 15th, 1964.

Q. Where did you meet? A. At the office of the Globe-Democrat in Mr. Evans' office.

Q. Who was present at that meeting? A. Mr. Evans, Mr. Cleaver, Mr. Bauman, Mr. Schwarzenbach and myself.

Q. What was said at that meeting? A. Mr. Bauman told Mr. Schwarzenbach at that time that he would not buy the twelve hundred customers that I had, that he

would buy eight hundred seventy-one customers. He would not get start orders and he would never get start orders and that he would not have an exclusive territory but that it was like buying an apartment with leases in it, or like buying a piece of property with an easement through it, that he would have competition on this route unless I would drop the lawsuit against the Globe-Democrat, then I would have to buy the customers from Mr. Kroner who they had given them to, and I could either operate it myself as an independent merchant or sell it to Mr. Schwarzenbach or whoever I wanted to so long as I charged the suggested retail price.

Q. So long as you charged the suggested retail price? A. Yes, sir.

Q. Did Mr. Bauman say anything—Was that the substance of what was said at that meeting? A. No.

Q. Was there anything further said? A. Mr. Bauman said he didn't expect an answer from us at that time but it was something for me to think over about dropping the lawsuit.

Q. Were you to let him know then? A. To think it over and let him know.

* * * * * * * *

Q. (By Mr. Siegel) When did you next, if you did, meet with Mr. Schwarzenbach? A. The following day.

Q. Where did you meet? A. I met with Mr. Schwarzenbach at his place of business on 159 West Argonne in Kirkwood.

Q. Did you go over and make arrangements to go over and see him at his place of business? A. Yes, sir, I did.

Q. Don't tell me what the conversation was, but did you have any conversation with him about the sale of your route? A. Yes, sir, I did.

* * * * * * * *

Q. (By Mr. Siegel) Mr. Albrecht, I will show you what has been marked Plaintiff's Exhibit 12, and ask

you if you will identify that document. A. Yes, sir. That is the contract that Mr. Schwarzenbach and I had signed in the agreement of selling him the route 99.

Q. Does your signature appear on that contract? A. It does.

Q. Can you identify the other signature as being Mr. Schwarzenbach's? A. Yes, sir.

Q. What is the date of that agreement? A. September 25th, 1964.

Mr. Siegel: I will ask that Plaintiff's Exhibit 12 be received in evidence, Your Honor.

The Court: Do you have any additional objections?

Mr. Hocker: Nothing further.

The Court: It may be received.

* * * * * * * *

Q. (By Mr. Siegel) Mr. Albrecht, did other carriers delivering the Globe-Democrat newspaper also have news dealers, drug stores, grocery stores, boxes, and racks within their territories? A. Yes, sir.

Q. Do such other carriers nevertheless have what is called in the carrier business an exclusive route? A. Yes, sir.

Mr. Hocker: Wait just a second. This calls for a conclusion. This calls, first, for matter of his own knowledge. We don't know the source of it. Maybe it is a contract, maybe there is some private understanding, Your Honor. It calls for a conclusion and I object to it.

The Court: Read the question, Miss Wood.

(Question read by the reporter, as follows: Q. "Do such other carriers neveretheless have what is called in the carrier business an exclusive route?")

Mr. Hocker: That calls for a conclusion of law, Your Honor.

Mr. Siegel: I don't think it does.

Mr. Hocker: It calls for a conclusion of fact and a conclusion of law.

The Court: I will sustain the objection.

* * * * * * * *

Q. (By Mr. Siegel) Will you state what change, if any, there has been in the number of customers that you have had on route 99, from 1962 to May 20th, 1964. A. Very few. The variation would be during the summer months and vacation time. The number would drop there because there are a lot of customers that took summer vacations and they are gone for different periods of time. Some went for two weeks, some a month, and during vacation time it does drop.

Q. What is the range in numbers of the customers that you had during that period of time? A. From the upper eleven hundred to twelve hundred.

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Cross-Examination, by Mr. Hocker.

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Q. (By Mr. Hocker) Now I will show you what has been marked Defendant's Exhibit C-1 and C-2, two pages, and ask you if that was not an enclosure in the copy of the letter of Mr. Bauman to Mr. Halls, which was sent to you, Mr. Albrecht, on May 16th, 1961? A. Yes, sir.

Q. Did you read Mr. Bauman's letter when you got it? A. Yes, sir.

Q. Did you read the enclosure? A. I suppose I did.

Q. I direct your attention to the following statement in Mr. Bauman's leter, the following statements—I believe to make it clear I will read the whole first page, Mr. Siegel.

(Reading) "Mr. Alfred H. Halls, Business Agent, St. Louis Newspaper Carriers' Union No. 450, 706 Chestnut Stret, St. Louis, 1, Missouri. Dear Mr. Halls:

"This acknowledges receipt of your letter of February 16th, 1961, advising us that the agreement between the Globe-Democrat and the Union for the carriers will be terminated May 26, 1961. It will also serve to acknowledge your letter of February 17th, 1961, inviting negotiations for a new contract and the various discussions which we have had since that time.

"As you know we have been advised by our counsel that the carriers are not employees and have an independent relationship with the newspaper. While we have no objection to continuing to deal with the carriers as a group as if it were a union as to matters which are permitted by law, we must take the position that any question of price is not such a matter and as to this we may not enter into an agreement with you. We are happy to consider your suggestions as to the needs of the carriers under current conditions from time to time and we will continue to consider these suggestions in determining our pricing policy. However, our pricing policy must be determined unilaterally by us.

"The legal point suggested is directly in issue in the suit you brought in the Federal Court and the argument of the motions now pending on the next law day may provide a judicial determination of the correctness of this position.

"You will be notified shortly what the wholesale prices to you will be. The recommended retail price has already been announced."——

Now I am about to read you the sentence which I want to call to your attention.

"It is our intention to see that service is provided to subscribers at the suggested retail price. If any of our carriers should increase the price to their readers, we will reserve the right to find means to supply subscribers at the recommended retail price."

Did this sentence come to your attention, Mr. Albrecht,

at the time you received Mr. Bauman's letter? A. Yes, sir, it did.

Q. Now with respect to the enclosure referred to——

Mr. Siegel: Did you read just the first page?

Mr. Hocker: I will read the rest of it, if you wish?

Mr. Siegel: All right.

Mr. Hocker: (Reading) "We understand that the carriers voted Monday night, May 15th, 1961, to request sanction from the International to strike against us. We would regard any such action not as a strike but as a boycott of our newspapers by a group of merchants.

"In 1959 we gave to the news dealers a statement of policy respecting the so-called ownership of areas and locations. This policy is also applicable to carriers as to their routes. A copy is enclosed for your information.

"Your members should understand, however, that if a boycott is attempted, we will regard each participating carrier as having given up his relationship with the Globe-Democrat and as having abandoned and forfeited his rights under this policy. We will feel free then to make arrangements for some other person to service the subscribers in the abandoned district without any provision for payment to the boycotting carrier.

"Also, in the event of a boycott, we will seek to recover triple our damages against the participating carriers under the State and Federal Antitrust Laws.

"If you have any further suggestions about this matter, we will be glad to discuss them with you. Very truly yours, Globe-Democrat Publishing Company. Signed G. D. Bauman, Business Manager."

Q. (By Mr. Hocker) Now with reference to the enclosure which has been marked Defendant's Exhibit C-1 and C-2, I would like to call your attention to these provisions. Again I guess I had better read it all to make it clear.

(Reading) "Globe-Democrat News Dealer Statement of Policy.

"Over the years there has been, and there will be no change in the policy of the Globe-Democrat toward its news dealers. Some of the newer dealers have expressed doubt about it, and for clarification it is defined, as follows:

"1. News dealers are merchants and not employees buying and selling for a profit the daily and Sunday Globe-Democrat in their respective territories and have the independence and ordinary business risks that status brings about. The company will deliver newspapers in bulk to the territory and from this point it is the responsibility of the news dealers to do whatever is needed to fulfill the purposes of the appointment.

"2. We are aware that news dealers frequently pay substantial amounts to the previous news dealers for their territories for arranging with the Globe-Democrat to have the privilege of selling newspapers transferred to them. We have in the past, and we will in the future, recognize this practice to the extent that it does not interfere with the publisher's right to be sure that the credit standing and efficiency of its news dealers is satisfactorily maintained, and to the extent that it does not interfere with the right of the publisher to determine for itself from time to time how it shall distribute its newspapers, either in its entire circulation area or in any territory or part of a territory.

"3. Specifically, the Globe-Democrat will not terminate an appointment or refuse to sell to an appointed news dealer and appoint another in his place, unless it shall have first determined on reasonable grounds that he is not accomplishing the results for which his appointment was made. Even in such a case, except where he fails to make prompt payment or knowingly permits sales in another news dealer's territory, the Globe-Democrat will before cutting off an existing news dealer and appointing

another, give the unsatisfactory news dealer a reasonable time, not exceeding sixty days, to produce a substitute to take over the territory whose credit, experience and efficiency is satisfactory to the Globe-Democrat. In case of a news dealer's death, the same privilege will be accorded his widow or the person he shall have designated in his will to have the privilege.

"4. No objection will be made to the substitutes so produced on the ground that a payment has been or will be made by the substitute to the existing news dealer or his representative provided the payment, in the light of past experience is not excessive nor so great as to impair the credit of the substitute.

"5. If a news dealer shall fail to accomplish the desired results for which his appointment was made, and if the Globe-Democrat shall be willing to assist the news dealer in lieu of terminating his appointment, the Globe-Democrat may, for such period as it shall determine, make an arrangement with the news dealer to provide him with such assistance as may be reasonably necessary, but for his account, in the amount of the costs thereof.

"6. The right of each news dealer whose appointment is effective to sell the St. Louis Globe-Democrat in his territory, will be maintained exclusively to him"—the word exclusively is in capitals—"as to single copy street sales so long as the price at which such sales are made in his territory shall not be higher than the price therefor suggested by the publisher for the City or County in which such territory is located.

"7. Nothing in this policy, however, is to be construed as recognizing as against the Globe-Democrat a property right in the sale of its newspapers in the territory for which a news dealer is appointed, and if in the future changing business conditions should in its opinion so require, the right of Globe-Democrat is expressly reserved without any liability to terminate or to make changes in the method of distribution of its newspapers and to abol-

ish or to limit from time to time any of the territories in which news dealer distribution is made. Globe-Democrat Publishing Company. Signed by Richard H. Amberg, countersigned Walter I. Evans, Circulation Director."

Is this clause that I read to you, "The right of each news dealer whose appointment is effective to sell the St. Louis Globe-Democrat in his territory, will be maintained exclusively to him as to single copy street sales so long as the price at which such sales are made in his territory shall not be higher than the price therefor suggested by the publisher for the City or County in which such territory is located." Did that clause come to your attention? A. It came to my attention. That is their statement, Mr. Hocker.

Mr. Siegel: Just answer the question. A. Okay.

Q. (By Mr. Hocker) Now after receiving this letter following the termination of the contract, did you, or did anyone in your behalf, write to the Globe-Democrat? A. I didn't.

Q. You didn't? A. I didn't.

Q. The question is did anyone, to your knowledge, write in your behalf? A. I am not sure; no, sir.

Q. Did you continue to operate after the termination—when the contract terminated do you remember June 26th, or May 26th, wasn't it, 1961? A. I believe you have the record of it there in that letter.

Q. That would be ten days after this letter was sent to you, is that right? A. It is possible that is the date.

Q. After ten days expired, the contract was no longer in effect and did you continue to act as the carrier for the Globe-Democrat on route 99? A. I did.

Q. Until the date that you were called down to the office or at least when Mr. Evans told you that they were going to exercise their right under this statement of policy in May, I think it was, 1964, did you make any communi-

cation to the Globe-Democrat with respect to your right with respect to the Globe-Democrat? A. Yes, sir.

Q. When was that? A. That I was an independent merchant and that I did not think it was——

Q. The question was when was it. A. When? I don't recall the date, sir.

Q. Well—— A. I think there is a letter on record to that effect.

Q. A letter on record? A. That I had received from Mr. Evans.

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Q. (By Mr. Hocker) Just before the recess, Mr. Albrecht, you said that there was some record of your statement to the Globe in a letter of Mr. Evans. I will show you Plaintiff's Exhibit 5, and ask you if that is the letter you referred to? A. Yes, sir.

Q. This is the letter that read, "Under date of June 1st, 1962, from the enclosed notices it appears that you are charging a dollar seventy cents per month for the daily Globe-Democrat in spite of our published announcement that the price is a dollar sixty cents. It is the policy of the Globe-Democrat not to deal with carriers who charge their subscribers more than the published rates, and if after this warning you persist in charging at the higher rate, we will take whatever legal steps appear to be necessary to effectuate our position." Is this the letter you referred to? A. Yes, sir.

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Q. (By Mr. Hocker) I will show you what has been marked Defendant's Exhibit D, Mr. Albrecht, and ask you if you can identify that as the restatement of the Globe-Democrat statement of policy made specifically applicable to carriers? A. Yes, sir.

Q. You did see a copy of that? A. Yes, sir.

Q. At or about the date that it bears? A. Yes, sir.

Q. That date is what? A. May 24, 1962.

Q. I wish to call your attention to two portions of that exhibit, paragraph 3, reading as follows: "The Globe-Democrat will not terminate an appointment or refuse to sell newspapers to an appointed carrier or appoint another in his place unless it shall have first determined on reasonable grounds that he is not accomplishing the results for which his appointment was made. In cases where a replacement is necessary, except where he refuses to supply his territory or fails to make prompt payment or charges more than the publisher's suggested retail price or knowingly permits sales in the territory of another carrier, in which case papers may be cut off immediately. The Globe-Democrat will, before cutting off an existing carrier and appointing another, give the unsatisfactory carrier a reasonable time, not exceeding sixty days, to produce a replacement to take over the territory whose credit, experience and efficiency is satisfactory to the Globe-Democrat. In case of the death of a carrier, the same privilege will be accorded his widow or the person he designates as his successor if such designation shall be deposited with the Circulation Department of the Globe-Democrat prior to the death."

And paragraph 5: "The right of each carrier whose appointment is effective to sell the St. Louis Globe-Democrat by home delivery in his territory, will be maintained exclusively to him under the terms of his appointment so long as the price at which such sales are made in his territory shall not be higher than the price therefor suggested by the publisher for such sales in the City or County in which such territory is located."

Did you read those two paragraphs in this Exhibit D when you got it? A. I did.

Q. Did you ever write the Globe-Democrat about that statement? A. I spoke to Mr. Evans after receiving the exhibit later that you had before.

Q. You mean after the letter of June, 1962? A. Yes, sir.

Q. Is that the one you are talking about? A. Yes, sir. Never had I agreed to that statement of policy. I had to deliver newspapers because of my investment, but never had I agreed to that statement of policy. Being an independent merchant I have the right to set my prices.

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JAMES McDOWELL

was called as a witness, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination, by Mr. Siegel.

Q. Will you state your name, please? A. James McDowell, M-c-D-o-w-e-l-l.

Q. Where do you live, Mr. McDowell? A. 4915 Argyle.

Q. By whom are you employed? A. Milne Circulation Sales Corporation.

Q. This is a corporation, is that correct? A. Right.

Q. Now I may refer to it hereafter sometimes as simply Milne. Where is Milne's home office? A. Birmingham, Michigan.

Q. What business is Milne engaged in? A. The procuring of readers for various papers throughout the country.

Q. Is the company's sales promotion limited only to newspapers? A. No, it depends on the area. Some areas have other accounts, other types of accounts.

Q. Do you here locally have other types of accounts? A. Yes, we do.

Q. Does the company, Milne Circulation Sales Corporation, have more than one office? A. Yes.

Q. Do you know how many offices they have? A. No, I can't give you a definite answer, but I think it is

around in the neighborhood of seventeen to twenty, somewhere in there.

Q. Do you know where some of those offices of Milne are located? The cities and states? A. Yes. Anywhere from Los Angeles to Miami, Florida, and in Canada, Montreal to Vancouver.

Q. What kind of service does Milne render to these companies that engage it? A. They serve—they procure readers for the paper.

Q. What means do you employ to achieve that objective? A. We have two means, we use telephone solicitation and we use direct sales, that is boy crews go from door to door.

Q. Does Milne have an office here in St. Louis? A. Yes, they do.

Q. What is the location of that office? A. 3915 Olive.

Q. 3915? A. 3615, pardon me.

Q. Does Milne render services such as you have just testified about in connection with sales promotion in order to obtain readers for the defendant Herald Company or Globe-Democrat? A. Yes, sir.

Q. For how long have you been employed by Milne? A. It is about seven years, six or seven years.

Q. In what capacity are you now employed, or were you employed in the year 1964? A. Area manager.

Q. For how long have you been area manager? A. Five years.

Q. Here in St. Louis? A. Here in St. Louis; yes, sir.

Q. What area does Milne's branch office here in St. Louis cover? A. Within a radius of about one hundred miles.

Q. Is the Globe-Democrat the only newspaper for whom you perform services here in this area? A. Yes, sir.

Q. On what basis, Mr. McDowell, is Milne compensated by the defendant Globe-Democrat for services rendered to it in connection with the St. Louis Globe-Democrat? A. They get paid by the order.

Q. They receive a commission on the sales or orders? A. Yes.

Q. Of customers that you procure here? A. That is right.

Q. Now did Milne render any services to the St. Louis Globe-Democrat relating to route 99 in Kirkwood, Missouri, during the year 1964; that is the route that the plaintiff in this case, Lester Albrecht, had. A. I didn't get the first part of that, sir.

Q. Did Milne render any service to the Globe-Democrat with respect to route 99 on which Mr. Albrecht—the route Mr. Albrecht had? A. Yes.

Q. That was during the year 1964? A. Yes.

Q. By whom were you first contacted in that connection? A. Mr. Evans.

Q. When were you first contacted by him? A. I honestly don't remember the exact date. It was about a year ago now, it would seem to me. I don't know the exact date.

Q. Some time around May of 1964? A. Right.

Q. Now when Mr. Evans contacted you did he call you by telephone? A. No, I was in the office, in the main office. I go there every morning.

Q. You go there when? A. Every morning.

Q. Every morning? On this first occasion when he spoke to you about Mr. Albrecht's route, what did he say and what did you say?

* * * * * * *

A. It seems to me—I am trying to recall. He called me into the office and asked me to get a group of boys together but that was just in conversation, for solicitation purposes.

Q. (By Mr. Siegel) This is the first time you spoke to him about it? A. Yes.

Q. Did you have any conversation with him about telephone solicitors or telephone solicitation? A. Not at that

particular moment. I don't recall that at that first meeting. That is what you are interested in.

Q. Yes. A. I don't recall.

Q. Well tell me, state just what was said. A. Well, he just asked me to get a group of boys together and this I went about my business to secure for him.

Q. Did he state for what reason or purpose you were to get a group of boys together? A. Not at that moment; no, he didn't.

Q. Did you ever have a conversation with Mr. Evans about telephone solicitation of residents within Mr. Albrecht's route 99 in Kirkwood? A. I don't remember directly, sir. We secure—the way we telephone solicit is by reverse directory and it is cut up into routes, carrier route order.

Q. Did you do any telephone solicitation for the Globe by use of the reverse directory? A. Yes.

Q. Did you do that in the year 1964? A. Yes.

Q. Did Mr. Evans ask you to do that? A. I don't think he did directly, no, sir.

Q. What do you mean "directly"? A. Well, I believe if I recall it, Mr. Evans, who is the promotion manager of the Globe, brought the cards up to our office and handed them to us to work.

Q. What did you do with the cards? A. We distributed them among three different people.

Q. What did these three different—what people were these you are talking about? A. They are three solicitors for us. Do you want their names.

Q. Yes. A. There was a chap named Jim England, Art Kimball, and another chap named Stan Martin.

Q. What was on these cards that were furnished to you by the Globe-Democrat? A. A complete list of the houses, the names of people, the houses on each street in that area.

Q. Would that be within this route 99? A. It would be.

Q. Now what did these three telephone solicitors do with those cards? A. They just started to telephone people.

Q. Did you give them any instructions as to what they should say? A. Verbally we did, yes. We told them to call and check the service in the area.

Q. Call and check the service? A. Yes, we do that as a general practice.

Q. Did Mr. Evans ever give you any instructions as to what you were to say to the people that were to be solicited by telephone? A. I can't honestly say that he did. You see we get our instructions sometimes second-hand from the promotion manager, and I can't recall whether it was Mr. Evans or Mr. Ernst, but we were told to find out if people were unhappy, let's say, with the charges they were paying.

Q. With the extra charges that who was paying? A. The subscribers. Any subscribers we might run into when we telephoned.

Q. Did Mr. Evans tell you that any of these people on these cards were paying prices in excess of the suggested retail price? A. I am not sure whether it was Mr. Evans or Mr. Ernst.

Q. Did one or the other? A. Yes. As I say, our instructions came from the office.

Q. The office of the Globe-Democrat? A. Yes. Undoubtedly there was somebody instructed us.

Q. What were the instructions, Mr. McDowell? A. They asked me to call, and I recall that we were not to offer any special inducement such as we do on the regular telephone solicitation. We were to call and find out how the service was in the area, if they were happy with it. If there was anything amiss then we were to assure them that they could have the paper delivered, if it was a question of increased price, if they were paying more than the published price or had been paying more than the published price, we were to suggest that we could assure them delivery at the established published price of the paper which was a dollar sixty cents and twenty cents per week.

Q. Do you normally solicit people who are already subscribers, Mr. McDowell? A. Yes, we do.

Q. In what way does that come about? A. Well, we just take the reverse directory and call house after house. We don't know which are subscribers and which are not. We find out very quickly on our opening statement. That is why we ask in order to get away from the subscriber and not irritate them too much, we ask them how the service is.

Q. Then you break off the conversation, do you? A. Thank them for taking the trouble, yes, sir.

Q. Is that what you did with respect to the cards that were furnished you by the Globe-Democrat? A. The same procedure. Only if we found out they were unhappy paying the extra price, we suggested they could get the paper at the regular price, the record prices we call it in our office, that is the published price.

Q. Is that a departure from your normal procedure, to advise the person on the other end of the telephone that if they are paying more than the defendant's suggested retail price you will see to it that the newspaper is delivered to them at the suggested retail price? A. I would say yes, sir.

Q. Had you ever done that before during the entire period of time that you have been handling telephone solicitation for the Globe-Democrat in the last, whatever it was, four or five years? A. No, sir.

Q. As a matter of fact, did Mr. Evans give you any instructions as to what your telephone solicitors were to say if they learned that the persons whose names and phone numbers they supplied you with were being charged more than the suggested retail price? A. Yes. I will say Mr. Evans or Mr. Ernst; I don't know which it was.

Q. Did you instruct your solicitors to inquire as to what price Mr. Albrecht was charging these people that were contacted by phone? A. Yes, sir.

Q. Did you do any of the telephone soliciting yourself? A. No, sir.

Q. Or the door-to-door soliciting? A. No, sir.

Q. What was the source of your knowledge as to what these telephone solicitors would say? A. We have a monitor system in our office over which we can listen to every conversation that is going on.

Q. Did you do that yourself? A. Yes.

Q. Yourself? A. Yes, sir.

Q. Did you do that on more than one occasion? A. Yes, sir.

Q. Can you estimate how many times you listened over the monitor? A. Yes, sir.

Q. Was it a great many times? A. I would say so. Sufficient, anyway, to know—to get the general——

Mr. Hocker: Please keep your voice up, Mr. McDowell, so that everybody on the jury can hear you. A. I am sorry.

Q. (By Mr. Siegel) On the basis of what you heard over the monitor that you had in your office, would you be able to hear the conversation between the subscriber or on the part of the subscriber and your solicitor? A. Yes.

Q. On the basis of what you thus heard, would you state what your telephone solicitors would say to the person called in this connection on Mr. Albrecht's route? A. Well, if they intimated they were not taking the paper, we would go ahead and try to solicit them to take the paper on a trial offer of thirteen weeks, our usual procedure. Here again we didn't offer them anything special.

Q. Um hum. A. If they were unhappy, some of them had stopped the paper—we ran into this—on account of the extra charge, service charge, as they called it. We managed to get some of those, but I can't remember the exact amount, but we did get some of those back under this new system of delivery at the published price.

Q. What about the persons who said they were receiv-

ing the Globe-Democrat newspaper and were having it delivered by Mr. Albrecht? A. We asked them if they were happy with his service.

Q. Did you ask them if they were paying over the suggested retail price? A. Yes, we did.

Q. And if they said they were paying above the suggested retail price or defendant's suggested retail price, would you tell them what the regular price was? A. Sometimes we had to ask them to look at their last bill and tell us how much they paid.

Q. Would you suggest to them what the defendant's suggested retail price was? A. Yes.

Q. If they said they were paying more than the regular price, what would the telephone solicitor say to them? A. Assure them that they could have it delivered at the regular price.

Q. Which was what? A. A dollar sixty cents for the daily, and twenty cents for the weekend.

Q. Did your telephone solicitor say who it was that would make such deliveries to the subscriber at the publisher's suggested retail price? A. No, they did not.

Q. When a telephone solicitor spoke to a person who indicated that Mr. Albrecht had been charging him more than the defendant's suggested retail price but wanted the newspaper delivered at the defendant's suggested retail price, what would your telephone solicitor do? A. We have an order form. They just filled out the regular order form we used for any new business. This is made up in triplicate. We just completed that form and took it down to the Globe-Democrat.

Q. Who would you give it to at the Globe-Democrat? A. To the person at the Circulation Desk.

Q. Were all the names and addresses that your solicitors called, these residents within route 99, supplied to you by the Globe? A. Yes, sir.

Q. Do you know how many persons Milne contacted by

telephone in connection with Albrecht's route? A. I haven't got a clue.

Q. Pardon me? A. I haven't got a clue. I have no idea.

Q. Do you know how many names and addresses of persons who had been having the Globe-Democrat newspapers delivered to them by Albrecht you were successful in obtaining for the Globe-Democrat? A. I think between two hundred fifty and two seventy-five, somewhere around that; I am not quite sure.

Q. For how long did these persons solicit by telephone? A. Well, we operate thirteen hours a day.

Q. For how many days did they continue to solicit the residents within Mr. Albrecht's route? A. It seems to me we were on it for about two weeks.

Q. Did they cover all of the persons who had telephones within that route? A. Right.

Q. Now did you use any other, or did Milne use any other method of solicitation to attempt to persuade subscribers to switch from Albrecht to have delivery of the Globe made by the Globe at the suggested retail price? A. No, sir.

Q. You used no other method of solicitation? A. No, sir.

Q. I thought you had mentioned some door-to-door solicitation. A. We didn't have anything to do with that, sir.

Q. You didn't have anything to do with it? A. All I did was hire the boys for Mr. Evans.

Q. You hired them for Mr. Evans? A. Yes, I did.

Q. Did he ask you to hire them? A. Yes, sir.

Q. Who paid for these boys? A. We paid the boys.

Q. Then they were employed by Milne Circulation, is that right? A. Yes, sir.

Q. How were they paid, on what basis? A. I think it was a dollar and a quarter an hour we paid them.

Q. Is that the basis on which your employees are paid

for soliciting? A. No. No. They are commissioned people.

Q. But in this particular case they were paid—— A. No. No. I of course don't know—there was no definite date as to how long they were going to work; but anybody we take on we always put them on the minimum guaranteed basis on that scale of a dollar and a quarter while they are learning, while they are training to become a sales person.

Q. Did the Globe-Democrat reimburse Milne for the hourly wages the boys Milne hired were paid? A. Yes.

Q. Those are the boys who solicited from door-to-door? A. Yes. There were only three.

Q. How many people were there during this time? A. Three.

Q. Did the door-to-door solicitation take place after the telephone solicitation? A. Yes, it did.

Q. Will you state what did Mr. Evans say to you with respect to requesting the door-to-door solicitation? A. I don't really recall, he just asked me to get some boys together. This was a common request because we often obtained boy crews for Mr. Evans.

Q. Did you ever—do you know how many people were solicited from door-to-door by these solicitors employed by your company? A. No, I don't.

Q. Did they solicit all of the residents that they could within Mr. Albrecht's territory? A. This I don't know, sir.

Q. Did you ever make any report to Mr. Evans as to how many subscribers they had been able to retain or to persuade to switch from Mr. Albrecht direct to the Globe? A. No, sir.

Mr. Siegel: I have no further questions, Your Honor.

Mr. Hocker: No questions, Your Honor. You may step down, Mr. McDowell. Thank you.

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GEORGE JOHN KRONER

was called as a witness, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination, by Mr. Siegel.

Q. Will you state your name, sir? A. George John Kroner.

Q. Where do you live, Mr. Kroner? A. 9921 Mitchell Place, St. Ann, Missouri.

Q. What is your occupation? A. Newspaper carrier.

Q. How long have you been a newspaper carrier? A. Since May 1, 1964.

Q. Will you speak a little louder, I can't hear you. A. May 1st, 1964.

Q. Was that the first time you became a carrier? A. Yes, sir.

Q. For whom, or what newspapers do you carry and deliver? A. St. Louis Globe-Democrat.

Q. What is the number of routes on which you have carried and delivered newspapers? A. Route 48, and at one time route 198.

Q. Is route 48 the route that you first became a carrier for? A. Yes, sir.

Q. Is that the route still being serviced by you? A. Yes, sir.

Q. The other route you mentioned was route what number? A. 198.

Mr. Siegel: I think we have agreed that it may be stipulated that route 198 is another number that is given to indicate the customers within route 99 that were turned over to Mr. Kroner by the Globe-Democrat.

Mr. Hocker: I think that is right.

Q. (By Mr. Siegel) Now where is route 48? A. In North Webster and part of Glendale.

Q. And route 198? A. The northeast segment of Kirkwood.

Q. From whom did you acquire route 48? A. Enloe Kanheide, E-n-l-o-e K-a-n-h-e-i-d-e.

Q. From whom did you acquire route 198? A. St. Louis Globe-Democrat.

Q. Were those both acquired on May 1st, 1964? A. No, sir.

Q. Was one of them? A. Route 48.

Q. Did you pay anything for the acquisition of route 48? A. Yes.

Q. To whom did you make that payment? A. Enloe Kanheide.

Q. Did you purchase from him the list of customers, their names and addresses? A. Yes.

Q. Have you been the exclusive carrier within route 48 since that time? A. The only carrier; yes.

Q. Is there anyone else that delivers newspapers within route 48? A. Yes. Joe Schumacher, the distributor on the corner of Lockwood and Gore, he goes in some of the apartments where he has gone for years and delivered papers to people he has known for years.

Mr. Siegel: Is the jury able to hear? Can you hear Mr. Kroner all right? I wasn't certain. Thank you.

Q. (By Mr. Siegel) Where were the subscribers within route 198 located? Were they all together or separated, or how were they distributed within that route that you were servicing as 198? A. Well, they certainly are not all together. Kirkwood is a big city and they cover the whole northeast section of it, from Manchester over to Argonne and Dixon to Geyer.

Q. Now from whom did you—I believe you testified you acquired route 198 from the St. Louis Globe-Democrat. Did you pay them anything for that? A. No, sir.

Q. Those customers were turned over to you free of charge? A. Right.

Q. How many customers did you have on route 198? A. The day I started it was three hundred fourteen dailies and two hundred sixty weekends.

Q. Do you know whether or not those three hundred-odd customers, whose names and addresses were given to you by the Globe-Democrat were customers that were previously serviced and to whom deliveries were made by another carrier? A. I didn't know that of my own knowledge, no.

Q. Pardon me? A. I did not know that of my own knowledge, no.

Q. Did you learn that? A. Yes.

Q. From whom did you learn that? A. Mr. Boyd. I believe it is Mr. Vernon Boyd.

Q. Mr. Boyd is with the Globe-Democrat, is he? A. Yes, sir.

Q. Do you know his title? A. No, I don't.

Q. Do you know is he the home delivery manager? A. I said I do not know his title.

Q. All right. Did you ever have any conversations with any officer or employee of the Globe with respect to the reason these three hundred-odd customers were given to you by the Globe-Democrat? A. The only person I spoke to—I spoke to Mr. Boyd and Mr. Cleaver about the customers when I answered the ad. I talked to Mr. Cleaver.

Q. What conversation did you have with Mr. Boyd of the Globe? A. I didn't have a lengthy conversation with Mr. Boyd. He explained to me that he was serving these customers because Mr. Albrecht was overcharging them.

Q. All right. About when did he tell you that? A. Some time in July.

Q. Did you enter into any written agreement or understanding with the Globe-Democrat with respect to these

three hundred-odd customers on route 198, Mr. Kroner? A. No, sir.

Q. Did you have any verbal understanding with them? A. Yes.

Q. What was that? A. That I was to handle that the same as I did route 48. I was to pay my bills weekly and bill the customers according to the prescribed rate.

Q. Who told you what the prescribed rate was? A. At that time they didn't tell me again. Mr. Cleaver had told me before.

Q. Well, what did he tell you the prescribed rate is? A. A dollar sixty cents a month for the daily papers and twenty cents a copy for the weekend.

Q. Did—— A. (Continuing) Ten cents a week for the insurance.

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Q. (By Mr. Siegel) If Mr. Cleaver did tell you anything about the suggested price, will you state what he did tell you with respect to the price that should be charged within route 198?

Mr. Hocker: Well—Go ahead.

A. I don't know that he specifically stated what to charge on 198. He said I would have to follow the prescribed rate.

Q. (By Mr. Siegel) I didn't hear you. A. I don't know that everytime I talked to Cleaver he told me what the rate would be. I was pretty well aware of it, and that is what I was to charge.

Q. At the time that you acquired route 48, did Mr. Cleaver have any discussion with you about the price you were to charge? A. Yes.

Q. What did he say? A. The rate was one dollar sixty cents a month for the daily paper and twenty cents for the weekend paper, and ten cents for insurance for those that have it.

Q. Did he indicate in any way what the policy or position of the Globe-Democrat is with respect to the price? A. Yes. He told me the Globe-Democrat would not tolerate overcharges.

Q. The Globe-Democrat would not tolerate—— A. Would not tolerate overcharging the customers.

Q. Overcharging the customers? A. Yes, sir.

Q. Now, how did you first come to speak to Mr. Cleaver about route 198? A. There was an ad in the newspaper for a route open with three hundred-some customers without cost.

Q. Do you recall the date that you saw the ad? A. It was in a couple of days, July 2nd and 3rd, I believe it was.

Q. July 2nd and 3rd? That is 1964? A. Yes.

Mr. Siegel: Will you mark this Plaintiff's Exhibit 20 and this 21.

(Thereupon, two pages from newspapers were marked by the reporter for identification as Plaintiff's Exhibits 20 and 21 respectively.)

Mr. Siegel: You have seen these, haven't you?

Mr. Hocker: Yes, that is from the Globe, is it? What is the number?

Mr. Siegel: 20 and 21. It is July 3rd, 1964. That ad is Plaintiff's Exhibit 20 and the July 2nd ad, 1964, is Plaintiff's Exhibit No. 21.

Q. (By Mr. Siegel) Mr. Kroner, I will hand you what has been marked as Plaintiff's Exhibits 20 and 21, and ask you if you can identify those? Were those the ads that you saw in the Globe-Democrat? A. Yes, they look like it.

Mr. Siegel: I would like to ask that Plaintiff's Exhibits 20 and 21 be received in evidence.

The Court: Any objection?

Mr. Hocker: No objection.

The Court: They may be received.

Q. (By Mr. Siegel) Now did you respond to the Globe-Democrat ad or Plaintiff's Exhibits 20 and 21? A. Yes, I did.

Q. Did you speak to anyone at the Globe-Democrat? A. Yes.

Q. Who was that you spoke to? A. Mr. Charles Cleaver.

Q. What did Mr. Cleaver say to you? A. He said a lot of things. What reference do you have, what did he say to me? I can't remember the entire conversation.

Q. With respect to route 198. A. He told me where it was and it would be understood if I took it I would have to carry on as I did on my other route at the present rate, pay for my papers each week, as I was doing. He told me where it was and what the area was.

Q. Did he tell you how long you would service those customers? A. There was no time period set because it was understood that should Mr. Albrecht sell the route I may have to give the customers up.

Q. That what? A. If Mr. Albrecht sold his route I may have to give up these customers.

Q. Was any other possiblity discussed with you if he did not sell the route? A. I asked the question because I was interested in another phase of it that should they get straightened up with Mr. Albrecht what would happen, and I was informed they may give them back to him.

Q. Was there any understanding reached as to if they didn't straighten up or if the Globe-Democrat did straighten up with Mr. Albrecht what would they do with the customers that the Globe gave to you? A. I would have to give them back.

Q. Back to whom? A. I would have to give them back to the Globe because that is where I got them.

Q. Back to the Globe? A. Yes. I didn't get them from anyone but the Globe.

Q. Did they say back to the Globe, or back to Mr. Albrecht? A. I don't recall just what was said because it wasn't that—I couldn't see—I didn't memorize the conversation. It was just I would have to give them up, that is what it amounted to; whoever would get them, I don't know.

Q. You would have to give them up if the Globe-Democrat got straightened out with Mr. Albrecht? A. I think the wording was the other way, if Mr. Albrecht got straightened out with the Globe-Democrat.

Q. I see. Did Mr. Cleaver make any further statement as to clarify what he meant by getting straightened out? A. No. I was pretty much aware of what the situation was.

Q. And what was the situation? A. As far as I am concerned, it is all hearsay, but it was quite prevalent.

Mr. Hocker: I will object to the hearsay, Your Honor.

The Court: I will sustain the objection.

Q. (By Mr. Siegel) Did you know, or had you been told by anyone at the Globe——

Mr. Hocker: I object to that question.

Mr. Siegel: I will withdraw it and rephrase it.

Q. (By Mr. Siegel) Had you been told by anyone at the Globe what the dispute was with Mr. Albrecht? A. Yes, sir.

Q. Who at the Globe told you? A. Mr. Boyd.

Q. What did he tell you the dispute was about? A. Overcharging.

Q. Now after that period of time, or after you met with Mr. Cleaver—do you recall what date that was? A. It was on Monday or Tuesday following the placing

of the ad. I don't recall just what day it was; it was the 6th or 7th.

Q. Now that would have been July 6th, or Tuesday, July 7th? It was either of those two days? A. On one of those two days.

Q. Now did you reach any understanding with Mr. Cleaver as to when you would begin delivering the Globe-Democrat newspaper to the three hundred-odd customers within that route that was designated as 198? A. I was to start learning the route by taking a few customers each day until such time as I felt I could handle it.

Q. When did you start doing that? A. In the middle of July.

Q. Who was it that was helping you learn the route? A. I learned it on my own. They just gave me a list in a certain section, Mr. Boyd gave me the people or a list in a certain section. I took those for a couple of days, then took another portion and kept adding to them.

Q. Mr. Boyd assisted you with that? A. He didn't assist me, he just gave me the list.

Q. Did you bill any of those customers for any of the deliveries that you made in July? A. I did not bill in July; no, sir.

Q. When did you start billing those customers? A. At the end of August.

Q. Now did you receive any compensation for the deliveries that you did make from the middle of July to the end of July? A. I received compensation from the Globe.

Q. The Globe compensated you? A. Yes.

Q. How were you compensated? A. By two cash payments totaling forty dollars, and some discounts on my billing.

Q. I see. Mr. Kroner, did you ever make any announcement to the customers within route 198 that you would be their new carrier? A. On August 1st I delivered a mimeographed notice to each one with the paper.

Q. You inserted that in the paper? A. Yes.

Q. You were authorized to do that by the Globe? A. Yes, sir.

Q. By whom at the Globe, who authorized you to do that? A. Mr. Cleaver.

Q. Mr. Cleaver? A. Yes.

Q. What price did you charge the customers within route 198 from the time that you took it over and began billing as of August 1, 1964, for delivery of the daily and weekend Globe-Democrat newspapers? A. At the regular subscriber's rate, a dollar sixty cents a month for the daily paper, and if they got a weekend paper, it was twenty cents per copy and insurance is ten cents a week. There are some customers there on a half rate basis, they will be billed half the price and the Globe will replace the other half. It still amounts to the same, one dollar sixty.

Q. Did you receive start orders from the Globe-Democrat Publishing Company within route 198? A. Yes, sir.

Q. Did you solicit any persons to become your customers within route 198? A. No, sir.

Q. So the only customers you had within route 198 were those that were turned over to you by the Globe-Democrat and those for whom you received start orders from the Globe-Democrat, is that correct? A. That is right.

Q. Do you know how many customers you were delivering to as of October 20th, 1964, which I believe is the date your deposition was taken? A. I don't have any exact record here. I have the one for the beginning and the end, so it would be somewhere in between.

Q. I will ask you this, or if you can answer that—— A. I wouldn't have that here exactly. It seems it was around three thirty, or somewhere in that area.

Q. Pardon me? A. Around three hundred thirty, I would think. Just an estimate.

Q. How many were daily—were those daily? A. Yes.

Q. About how many Sunday or weekends? A. That would be around two hundred eighty-five or two hundred ninety.

Q. How did your delivery to subscribers on route 198 terminate, and when? A. I sold the route to Mr. Eugene Schwarzenbach.

Q. Eugene Schwarzenbach? A. Yes.

Q. When did you sell it to him? A. As of December 1st, 1964.

Q. Did he pay you for those customers that you sold to him? A. Yes, he did.

Q. What was the date you sold him? A. December 1st.

Q. Do you know how many customers there were at that time? A. Three hundred sixty-four daily and three hundred thirty-six weekend.

Q. How much did Mr. Schwarzenbach pay you for those customers, Mr. Kroner?

Mr. Hocker: I object to that as irrelevant, Your Honor.

The Court: Overruled.

A. Thirty-six hundred dollars.

Q. (By Mr. Siegel) Thirty-six hundred dollars? A. Um hum.

Mr. Siegel: No further questions.

Mr. Hocker: Thank you, Mr. Kroner. No questions.

The Witness: Thank you.

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Mr. Siegel: I would first like to read certain questions from Interrogatories that were propounded to defendant, The Herald Company, a Corporation, doing business as Globe-Democrat Publishing Company, and then to read the answers to the Interrogatories.

Interrogatory No. 1. State whether defendant leased equipment from, and whether defendant used the services of the Associated Press in the year 1964; and if so, what

kind of information was obtained and to whom was such information disseminated.

Answer to Interrogatory No. 1. Yes. News to its readers.

Interrogatory No. 4. State whether defendant's newspaper, the St. Louis Globe-Democrat, during the year 1964 carried national advertising for persons, firms or corporations located outside the State of Missouri.

The answer to No. 4 is "Yes".

Interrogatory No. 9. State the names of cities and states in which defendant's newspaper, The St. Louis Globe-Democrat, is delivered to subscribers by newspaper carriers, such as plaintiff.

The answer to 9 is: Missouri, Illinois, City of St. Louis City and St. Louis County, St. Clair County and Madison County.

Interrogatory No. 14. State whether during the month of May or June, 1964, defendant employed or contracted with any person, firm or corporation to solicit residents within plaintiff's territory, route 99, to see if they would be interested in having the paper delivered to them at the defendant's suggested retail price by a method of delivery—by a method other than delivery by the plaintiff.

The answer to Interrogatory No. 14 is "Yes".

Interrogatory No. 15. If the answer to the preceding interrogatory is in the affirmative, state (a) the name and address of the person, firm or corporation that was so employed or engaged by contract by defendant to perform the foregoing service.

The answer to 15 (a) is Milne Sales Company, 3615 Olive Street, St. Louis, Missouri.

15 (b) The instructions given to said person, firm or corporation with respect to what should be said to residents in plaintiff's territory, route 99.

(b) The answer: There were no written instructions. See testimony of Walter Evans and James McDowell taken by plaintiff.

Those are all the interrogatories.

I would now like to read certain admissions by defendant contained in the deposition of Walter I. Evans, the Circulation Director of defendant, starting on page 2.

Q. Will you state your name, please? A. Walter I. Evans.

Q. For how long have you been employed by the Globe-Democrat? A. About nine and a half years.

Q. In what capacity? A. Circulation Director.

Page 3:

Back on the record. We can stipulate, is it agreeable, then, Mr. Hocker, that we can stipulate that hereafter when I refer to the Globe-Democrat Publishing Company, the Missouri Corporation that was in existence prior to December, 1963, and The Herald Company, that I will refer to them collectively as the publisher.

Mr. Hocker: Yes, we can stipulate that whenever you use the word publisher in reference to the St. Louis-Globe-Democrat, you refer either to The Herald Company or to the former Globe-Democrat Publishing Company, or to both, as the context may indicate, or as the chronology may require. There will be no point made about which corporation is referred to when you use the expression publisher.

Q. Now Mr. Evans, in what way or manner has the Globe-Democrat newspaper been distributed by the publisher? A. Well, in many ways. It has been distributed to individual subscribers throughout the Greater St. Louis Area by carriers, a term we use as carriers. It has been distributed for single copy sale in many various ways through dealers, single copy sales at retail outlets, including storage racks, stands, etc. And throughout the two-state area, more or less the same pattern is followed. There are two main methods of distribution: home delivery and individual retail sales, plus mail distribution in those areas where we do not have dealer or carrier distribution.

Q. When you refer to the "the two-state area," what states did you have reference to? A. Missouri and Illinois.

Q. Now with respect to the carrier system that you mentioned, how long has this method of distribution been used by the publisher to your knowledge? A. Forever.

Q. Pardon me? A. Forever.

Q. In any event, for a long time, even prior to the time that you came here? A. Oh, yes.

Q. Now what area is covered by the carrier system? A. St. Louis, most of St. Louis County, portions of Madison and St. Clair Counties in Illinois.

Q. And how, perhaps in some more detail, does this carrier system operate? A. The carriers are independent merchants who buy the number of papers they need from us for distribution to all their subscribers. They buy the papers at a wholesale price and earn their living by selling it at a retail price.

Q. Their subscribers are whom? What people are their subscribers? Are these people who live in individual homes who have the Globe-Democrat newspaper delivered to their homes? A. Yes. Or apartment.

Q. Or other business or apartments? A. Yes, that is right.

Q. Now, how is this area in which the carriers work divided, if it is divided? A. It is divided by so-called routes.

Q. How many routes does the publisher have? A. At present I think we have about one hundred sixty-five carrier routes. I don't know if you would say the publisher has. They are in existence. We don't have these routes. There are in existence about one hundred sixty-five routes.

Q. Do you know for how long these routes have been in existence? A. Some of them have been in existence as long as the carrier system has been in effect. Others have been recently created.

Q. ——Then there was interposed another question or

answer, then the answer: A. To answer your question more accurately, as of June we had one hundred seventy-two routes.

Q. The publisher does not employ employees to deliver the Globe-Democrat to customers on those routes, does it? A. No.

Q. It uses the carriers, the independent merchants to deliver the newspapers to home subscribers, does it not? A. The terminology, it uses carriers to deliver it, yes. The carriers deliver it, yes.

Q. And the publisher is not in the carrier business, that is, the business of delivering papers, the Globe-Democrat newspapers to home subscribers, is it? A. No.

Mr. Hocker: You mean within the one hundred and seventy-three routes.

Mr. Siegel: Yes, within the one hundred seventy-two or seventy-three routes.

The Witness: No.

Q. How do these individual carriers acquire the newspaper routes? What is the procedure by which they acquire newspaper routes? A. Generally they are purchased from one party to another.

Q. They don't purchase the route from the publisher, do they? A. No, sir, we have no routes.

Q. They don't pay anything to the publisher for the customers on these routes, either, do they? A. No.

Q. So that the carrier who was starting in the carrier business, he would purchase the route and the list of customers from the previous carrier, is that correct, who was servicing that route? A. Yes.

Then on page 11:

Q. Mr. Evans, you mentioned that there were as of, I think last June now, whatever that month was, in this year, some one hundred seventy-two routes. Now I would like to ask you on how many routes did the publisher

engage in the carrier business of selling and delivering Globe-Democrat newspapers for home delivery in the year 1956? A. None.

Q. The same question for the year 1957. A. The same answer.

Q. 1958? A. Same answer.

Q. 1959? A. Same answer.

Q. 1960? A. Same answer.

Q. 1961? A. Same answer.

Q. 1962? A. Same answer.

Q. 1963? A. Same answer.

Q. 1964? A. Now would you rephrase your question?

Q. Now I will ask you that with respect to 1964, on how many routes did the publisher engage in the carrier business of selling and delivering Globe-Democrat newspapers for home delivery in the year 1964?

Mr. Hocker: Now wait. I don't want to quarrel with your wording, but when you say "the carrier business," you mean as he described it in his previous testimony, I take it.

Mr. Siegel: All right. By "the carrier business," I mean the business of selling and delivering Globe-Democrat newspapers for home delivery.

Mr. Hocker: All right, go ahead and answer, Walter.

A. One.

Q. (By Mr. Siegel) All right. Now let me ask you that same question with respect to the present time. Which was October 19th, 1964. A. None.

Q. So that during this entire period from 1956 up to the present time, there has only been one occasion on which the publisher has engaged in the business of selling and delivering Globe-Democrat newspapers for home delivery, and that occurred during the year 1964? A. Right.

Q. All right. Let me ask you: other than with respect

to the Albrecht case, do you know of any instances in which the publisher has ever condoned or approved the practice of punching, that is the practice of permitting one carrier to sell and deliver Globe-Democrat newspapers within the route of another carrier? A. No. With this exception, Mr. Siegel, there can be a mutual agreement between carriers. If it is geographically practical for one carrier to deliver a certain small area, one block of another carrier, and by mutual agreement they agree to this, that is approved. But that would hardly be called punching. Punching infers the aggressive, trying to take away business.

Q. Now with respect to Mr. Albrecht, the plaintiff in this case, did the publisher condone or approve the practice of one carrier selling and delivering newspapers within Mr. Albrecht's route? A. Yes.

Q. And then, as I understand your testimony, except for that one possible exception you mentioned with respect to punching where there was a mutual agreement between carriers permitting one to sell within another's route, do all of the carriers on these one hundred seventy-two routes, or whatever may be the number at any period of time between 1956 and the present time, are those persons the ones who had the exclusive right to deliver within their routes A. To home delivery subscribers, yes.

Q. Now what equipment do the carriers use, if you know, in order to make their newspaper deliveries? A. Whatever they choose to use.

Q. Well, as a matter of practice, what do they actually for the most part use. Vehicular equipment, or how do they deliver? A. In the main, from vehicles.

Q. From automobiles or panel trucks, or what sort of vehicle? A. Everything from a horse drawn vehicle, believe it or not, to trucks.

Q. Does the publisher own any such equipment? A. No.

Q. Such situations as Mr. Hocker described and that

you have previously mentioned, did the publisher employ any persons to deliver the Globe-Democrat newspaper on any of these newspaper routes of carriers that you have described in the year 1956?

Mr. Hocker: You mean except for the exceptions which he mentioned, the emergency situations?

Mr. Siegel: Except for these few exceptions that you have mentioned and the illustration that Mr. Hocker mentioned.

A. No.

Q. The same question for 1957? A. Same answer.

Q. 1958? A. No.

Q. '59? A. No.

Q. 1960? A. No.

Q. 1961? A. No.

Q. 1962? A. No.

Q. 1963? A. No.

Q. 1964? A. Now would you rephrase the question again?

Q. Yes. Did the publisher employ any persons to deliver the Globe-Democrat newspaper on any of these routes in the year 1964? A. Yes.

Q. Does the publisher at the present time employ any persons to deliver the Globe-Democrat newspaper on any of the newspaper carrier routes? A. No.

Q. On what route did the publisher employ persons to make delivery of the Globe-Democrat newspaper during the year 1964? A. Albrecht's.

Q. Well, just tell me all the ways and means by which the publisher has taken any steps or efforts to see to the maintenance of its suggested retail price. A. With the exception of Albrecht's we have taken no other steps except to contact carriers whose subscribers have called to our attention the fact that carriers were not charging our suggested price. And requesting them to do so with the exception of the Albrecht case.

Q. Now with respect to the Albrecht case, what steps have been taken to see to the maintenance of the publisher's suggested retail price? A. We notified Albrecht that if he did not maintain the suggested retail price we would go into business on a competitive basis offering the subscribers in his territory the opportunity to have the paper delivered to them at the retail price.

Q. Did you do anything else? A. We sent a letter to everyone whose name was available to us in the Albrecht territory, advising them that if they wanted papers delivered at the suggested retail price we would have them available for them.

Q. And this was done, too, like the other things you have mentioned, in an effort to maintain the publisher's suggested retail price? A. That is right.

Q. Can you state the date of such price changes and the amounts, please.

And over on page 31 I will read: A. April 10, 1961, the suggested retail price of the paper went to seven cents.

Q. (By Mr. Siegel) Weekend paper or the daily? A. Daily paper.

Q. That was seven cents from five cents, was it not? A. That is right.

Then on page 37:

Q. Those are the changes. All right. Now do you know —I think you have already testified—or let me ask you anyway. Do you know the plaintiff in this case, Lester Albrecht? A. Yes.

Q. For how long have you known him? A. Oh, ever since he took over.

Q. Since approximately June of 1956? A. Yes.

Q. During the time Albrecht has been a carrier for the publisher, have you or any officer or employee of the publisher ever had occasion to speak to Albrecht about the manner or method in which he was operating his business as a carrier for the St. Louis Globe-Democrat? A. No.

On page 42:

Q. All right. Let me ask you, do you recall any complaints from any customers of Albrecht's about any matters other than price? A. No.

Q. Did the publisher ever have any complaints about Albrecht's operation or the manner in which he conducted his business of performing as a carrier of the St. Louis Globe-Democrat newspaper during the period from the time he first started in June of 1956 up to the present time, other than with respect to price? A. Not to my knowledge.

Page 56:

Q. Meanwhile, I will show you what has been identified as Exhibit C, and I think we can stipulate this is the same as Plaintiff's Exhibit 18, and I will ask you, Mr. Evans, is that the card that was sent out to the residents located within route 99? A. Yes, it is.

Q. Now, how many cards did you receive back from the residents within route 99 which was Albrecht's route? A. I would have to look back over the record.

Q. Now what did you do after you received such card from—whether it was a customer of Albrecht or resident of route 99? A. We turned them over to one of our employees for delivery.

Q. And what was the name of that person to whom you turned these cards over? A. Vernon Boyd.

Mr. Hocker: I counted one hundred twenty-nine of these cards here but I may have missed a few.

Mr. Siegel: I will be willing to stipulate to your counting of the cards and let the record show that Mr. Hocker has counted the cards that Mr. Evans testified were the cards received back from the residents to whom they were sent under cover letter of May 21, 1964, and the total number of such cards is what?

Mr. Hocker: According to my count is one hundred twenty-nine; I may have missed some, I didn't take them out of the file.

Mr. Siegel: One hundred twenty-nine. I would be willing to stipulate to that number, give or take a few.

Q. Now after such a card was received, would you issue a stop order to Albrecht with respect to that particular person who sent in such a card? A. Yes.

Q. Now does this cumulative list, Exhibit 19, contain more names than the number of people who sent back cards in response to your letter of May 21? A. Yes, sir, it does.

Q. How were those additional names obtained? A. The Globe-Democrat has an agreement with an organization that does telephone promotion work. We used this organization to phone residents residing in Albrecht's territory to tell them verbally what was in Exhibit 17. That has reference to the letter of May 20th or 21st—May 20th, 1964.

Q. What is the name of this organization? A. Milne Sales.

Q. Who contacted them? A. I did.

Q. To whom did you speak? A. James McDowell.

Q. All right. Now you were telling me about the conference that you had in your office some time in May of 1964, after May 21st, with James McDowell. He is with Milne Sales? A. That is right.

Q. What did you say and what did he say at that meeting? A. I told him that I wanted him to put some people on the phone to contact residents in Albrecht's territory and express to them the facts contained in our letter, your Exhibit 17—that is the letter of May 20th—and to see if they would be interested in having the paper delivered to them at the suggested retail price by a method other than Albrecht's.

Question on page 67:

Q. Was there any other method in addition to the sending out of the card identified as Plaintiff's Exhibit 18, and this telephone solicitation, by which customers were sought by the publisher? A. Yes. The same Milne organization

had several high school boys, I believe, going out door to door with the same presentation.

Q. Did you have any further discussion with Mr. McDowell or anybody else to embark on this door to door solicitation program? A. I told him I wanted it.

Q. At the same meeting in May, or subsequent? A. It might have been subsequent. I can't do any better than this. I think this will be quite accurate, two days later. That would make it May 23rd, the Milne organization started to phone. On completion of this phoning one week went by and then a door to door solicitation was made. Now the only question of time here, Mr. Siegel, how long the phoning took. It would be my guess it probably didn't take more than about a week.

Q. Mr. Evans, did you send Albrecht stop orders for any of his customers from whom you did not receive back a card such as those identified as Plaintiff's Exhibit 18? A. Yes. We sent him stop orders when we received start orders from the Milne organization either on the telephone or door-to-door campaign.

Question on page 71:

Q. Did you speak with Mr. Boyd? A. Probably.

Q. All right. Now what position did he have with the publisher? A. His title is home delivery supervisor.

Question page 74:

Q. What equipment, if any, was used to deliver the Globe-Democrat newspaper to customers on route 99? A. Automobiles.

Q. Whose automobiles? A. Those of the men delivering them.

Q. The personal automobiles of Boyd, Dorway and James? A. Yes.

Page 79:

Q. So is it correct that Boyd, Dorway and James delivered papers to customers within route 99 during the period from May 23rd, 1964, up to some date prior to July 6th, 1964? A. Yes.

Q. Who was that person? A. Carrier 198. His last name is Kroner. I don't know what his first name is.

Question on page 81:

Q. From the time that Kroner took over or began delivering Globe newspapers to customers within route 99, is it a fact that the publisher was no longer then delivering those newspapers to customers within route 99? A. That is right.

Page 91:

Q. Mr. Evans, was there any reason other than the price that Mr. Albrecht charged why the publisher undertook to deliver its newspaper itself to customers within route 99? A. I think the answer is really a quick, direct no, but I had better review the question.

(Last question read by the reporter.)

A. No.

Mr. Hocker: Incidentally, you did pick up a few new customers, I suppose, that you didn't have before?

The Witness: ——Mr. Evans—We would have to by force of numbers, yes, and those who had quit him permanently before this because of this and who were happy to come back.

Mr. Hocker: This was not the purpose of this?

The Witness: Absolutely not.

Q. Mr. Evans, were the arrangements made with Boyd, Dorway and James only temporary until the publisher could find some other carrier other than Albrecht to deliver its papers within route 99? A. Yes.

Page 95:

Q. Did the publisher charge Kroner anything for the customers' names or the right to deliver papers to customers within route 99? A. No.

Page 103:

Q. Did you tell Mr. Cleaver to instruct or to tell Mr.

Kroner what price he was to charge? A. Oh, I probably told Mr. Cleaver to remind Mr. Kroner that our suggested retail price was a dollar sixty cents a month for the daily and twenty cents a weekend for the weekend.

Q. Did you have any conversation or tell Mr. Cleaver what he was to tell Mr. Kroner with respect to why these customers were being turned over to him and what practice Albrecht had been following concerning prices? A. Well, Mr. Siegel,. I doubt it, because we knew perfectly well that Mr. Kroner knew all the circumstances surrounding this. It was by now fairly common knowledge, I am sure.

Page 105:

Q. What is the regular practice that is followed by the publisher when it learns of or received any request from persons residing within a route that they want to have the Globe delivered to their home? What does the publisher do? A. We send them the start order.

Q. Send who the start order? A. The carrier serving that territory.

Page 106:

Q. (By Mr. Siegel) No, I don't think so. I am talking about someone who—well, let's first start; talk about someone who unsolicited calls up and says, "I would like the Globe delivered to me," and this person is a resident of the area that comprised route 99.

Mr. Hocker: And when did he receive this?

Mr. Siegel: After May 20th, 1964.

Mr. Hocker: And before what date?

Mr. Siegel: Anytime after May 20th, 1964.

Mr. Hocker: Well, this assumes that the practice was constant. It may be, I don't know.

A. At the time that employees of the publisher were delivering the paper, we gave them the start orders. After

Kroner took over the delivery of these papers, we gave him the start orders with the exception of those people who might have been returning from vacation who specified that they wanted the delivery of the paper resumed by Albrecht. In this case we sent him the start orders.

Q. Was that the only case in which you would send the start orders to Albrecht? A. Yes.

Page 128:

Q. Did you meet with Mr. Schwarzenbach? A. Yes.

Q. And who was present at the September 22nd, 1964, meeting? A. Mr. Schwarzenbach, Mr. Bauman and myself?

Q. And what was said at that meeting? A. We said we had checked his various statements that he had given us, that they seemed to be satisfactory and that if he were to consummate this deal we would approve of him as a carrier.

Q. Anything else said? A. The same discussion took place, more or less the same discussion took place about the three hundred-odd more or less papers being delivered by Kroner, and we told him that this, as any normal deal, would be between the two of them, that if he was interested in acquiring these papers, it was up to him to contact Mr. Kroner and again, if he did acquire them—if he didn't acquire them, Mr. Kroner would continue to service the subscribers in there. If he did acquire them and maintained the principles laid down in the carriers' statement of policy that he would, as long as he maintained those principles, have exclusive rights in the territory.

Q. (By Mr. Siegel) If he acquired only Albrecht's subscribers, what did you indicate to him as to whom starts would be given within route 99? A. Kroner.

Q. And only if he, Schwarzenbach, acquired the customers whom the publisher had given over to Kroner, would he, Schwarzenbach, be recognized as the exclusive

carrier for route 99. Was this stated to him? A. I believe it was stated that way, yes.

Those are all the questions I have, or admissions from Mr. Evans' deposition.

* * * * * * *

(Witness excused.)

Mr. Siegel: At this point, Your Honor, I would like to continue to read from further admissions by defendant, first as contained in the deposition of G. Duncan Bauman, the defendant's business manager, which were taken on October 26, or which was taken on October 26, 1964. Page 2.

Q. Will you state your name, please? A. G. D. Bauman.

Q. By whom are you employed? A. The Globe-Democrat.

Q. In what capacity? A. Business manager.

Q. For how long? A. As business manager?

Q. Have you held that position, yes. A. I think about four years.

Q. Do you render any legal services to the publisher? A. Yes.

Q. On what basis do you do that? A. I advise the publisher on labor matters and many other matters as they arise.

Q. And you are an attorney licensed to practice in the State of Missouri? A. Yes.

Q. Do you know the plaintiff, Lester Albrecht, in this case? A. Yes.

Page 4

Q. For how long have you known him? A. I think about three or four years.

Q. What kind of a reputation, if you know, does Albrecht have as a carrier for defendant, or did Albrecht have as a carrier for the defendant or publisher? A. Respecting service he had an excellent reputation, respecting price factors, he had a bad reputation.

Q. Had there been any complaint other than those having to do with his charging more than the publisher's suggested retail price about Albrecht's performance of his job as a paper carrier for the publisher? A. Yes.

Q. What were they? A. There were complaints as to pricing practices.

Q. I say, other than his charging more than the suggested retail price, publisher's suggested retail price. A. I don't know of any other than the pricing.

Q. As a matter of fact, Mr. Bauman, didn't you say at a meeting with Albrecht in this very same office that you wish other carriers performed their work as well as Albrecht? A. I did.

Page 6

Q. Didn't you say that if he would adhere to the publisher's suggested retail price, or charge no more than the publisher's suggested retail price, that you thought, one, such a contract in line with your statement of policy, or, that is the Globe-Democrat's statement of policy, could be entered into and there wouldn't be any difficulty in giving back to Albrecht the customers he had on his route before May 20th, 1964? A. I think this is the gist of what I said.

* * * * * * *

Q. Did you also state further that the publisher wasn't in the carrier business and didn't want to be, wanted to have the newspapers delivered by the carrier? A. I am certain that I said that.

Page 10:

Q. Has the publisher had occasion other than with respect to the plaintiff, Lester Albrecht, to implement this policy of the carriers charging no more than the suggested retail price? A. Yes, on many occasions.

Q. Can you recall any of those occasions? A. I can't recall them specifically but I recall there have been numerous complaints of over-pricing over the last four or five years and that they have all been forwarded to Mr.

Evans who contacts or has Mr. Cleaver contact the carrier and advise the carrier of our policy.

Page 13:

Q. Did you help write the letter of May 20th, 1964, to Mr. Albrecht?

Mr. Hocker: When you say write, you mean compose?

Mr. Siegel: I mean compose.

The Witness: Could I see it?

Mr. Siegel: That is Plaintiff's Exhibit——

Mr. Hocker: No, I don't think you did mark it. You identified it before as Exhibit A to the Complaint.

Mr. Siegel: That is correct. And that is what I have shown you, Mr. Bauman.

Q. Did you help compose that letter? And this is the letter of May the 20th. A. I did.

Q. Did you discuss the writing of such letter with any officer or employee of the publisher on or before May 20th, 1964? A. I did.

Q. With whom? A. Discussed it with Mr. Evans, Mr. Amberg and Mr. Hocker.

Question on page 16:

Q. Now Mr. Bauman, after these letters were sent out, the letter of May 20th and the letter marked Plaintiff's Exhibit 19 that was sent to the residents or some of the residents within route 99, together with that card marked Plaintiff's Exhibit 18, did the publisher undertake the delivery of its newspapers to customers within route 99 for the purpose of making a profit as a participant in the carrier business?

And the answer: At no time in any of our deliberations or discussions was the question of profit ever discussed.

Question on page 17:

Q. If the plaintiff in this case, Albrecht, had not charged his customers a price in excess of the publisher's

suggested retail price, would the publisher have undertaken to deliver its newspapers by itself to those customers within route 99? A. If other factors had not arisen, such as poor service, or other problems that go with the paper, and Mr. Albrecht had followed the suggested retail price, we would not then have competed with him because our statement of policy sets forth that we will reserve the right to compete only if the carrier does not observe the suggested retail price.

Q. (By Mr. Siegel) Were there any other factors other than the fact that he charged more than the publisher's suggested retail price? A. In the case of Albrecht, no.

Q. You mentioned poor service. You mean poor service—— A. Your question was so framed I couldn't answer it categorically because yes, we would have discontinued selling papers to Albrecht, or any other customer who doesn't perform the service the Globe-Democrat needs, and except for this factor which might have arisen in the Albrecht case but did not, we would not have competed with him had he observed the suggested retail price.

Q. So the record is clear then, the only point of difference that you had, or any complaint that the publisher had against Albrecht, was the fact that he charged more than the publisher's suggested retail price? A. Yes, that is right.

Page 20:

Q. Well, if it be true that Kroner took over the delivery of Globe-Democrat newspapers to customers within route 99 as of August 1, 1964, was the publisher then continuing to deliver newspapers to customers within route 99 after that date? A. Well, if you assume what Kroner says is true, the answer is no, the publisher was not delivering papers.

Q. If that is true, the publisher was no longer competing then? A. Yes, that would be true.

Q. That the publisher was not continuing to compete after August 1, 1964? A. Right.

That is all of Mr. Bauman's deposition.

Mr. Cleaver's deposition—this is the deposition of Charles B. Cleaver, the Circulation Manager of the defendant. This was taken on October 26, 1964.

Page 2:

Q. Will you state your name, please? A. Charles B. Cleaver.

Q. By whom are you employed? A. Globe-Democrat Publishing Company.

On page 3:

Q. In what capacity are you employed by the Globe-Democrat? A. Circulation Manager.

Page 20:

Q. Now did the publisher place some advertisements in the newspapers with respect to route 99? A. Yes. There was an ad placed for a carrier for the route, yes.

Page 21:

Q. Well, from a letter or oral response, any response, whether it was oral or written, did you interview any such persons? A. I interviewed Mr. Kroner, yes.

Page 22:

Q. And what did you say to him? What did you tell him about the route? A. I told him exactly what it was.

Down below some other questions:

Q. All right, proceed with what you did tell him. A. I told him he didn't have to buy the customers like he had bought the route previously, that we would just give him the list of customers.

Q. And there was no charge made to him for those customers and addresses? A. That is right.

Q. And the right to deliver them? A. Right.

Q. All right. What else did you tell him? A. I told him I had no idea how long he would be on that route delivering it with that number of customers, whether it would be a week, a month, or six months, or two years, or any

length of time. He would get the profit just the same as he did on the route that he has.

Q. Did you tell him why these customers were being turned over to him? A. Yes.

Q. What did you tell him about that? A. I told him there was overcharging on the carrier, he had been charging people more, we had a number of calls on it, had letters on it, some of them had stopped the paper on account of it.

Q. The carrier you told him about was Mr. Albrecht? A. Yes.

* * * * * * * *

Page 24:

Q. What is the customary practice and procedure followed by the publisher with respect to starts within a route as to who is advised and asked to deliver papers on new starts? A. They are sent out to whatever carrier it belongs to within that area.

Q. All right. Now was that practice or procedure followed with respect to route 99? A. No, we sent new starts to 198.

Q. To Mr. Kroner? A. That is right.

Q. Did you do that regardless of where the customer was located within route 99? A. Yes.

Page 25:

Q. Mr. Cleaver, when Mr. Kroner first became a carrier for a Globe-Democrat route did you speak with him? A. Yes.

Q. What instructions did you give, or what did you say to him with respect to the publisher's suggested retail price? A. Well, I am assuming I told him, I tell everyone——

Q. We are really not interested in what you are assuming. A. I don't remember the very words.

Q. Not the very words, but to the best of your recollection, what did you say to him? A. I told him what our

suggested retail price was. If that wasn't followed we had a perfect right to put competition in the same route with him.

Page 29; at the bottom:

Q. I would like to ask you again. Did the publisher agree with Kroner that Kroner was to deliver and charge customers within route 99 the same way that he delivered and charged customers within his other route which he had been authorized to handle? A. I would say yes.

That is all.

Plaintiff rests, Your Honor.

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* * * * * * *

Motion for Directed Verdict.

At the close of plaintiff's case, defendant filed the following motion for direct verdict.

"Now at the close of plaintiff's evidence, defendant moves that the Court direct a verdict in favor of defendant under Count I of plaintiff's Complaint.

"And for grounds of its motion states that under the law and the evidence plaintiff is not entitled to recover under that Count.

"Now at the close of plaintiff's evidence, defendant moves that the Court direct a verdict in favor of defendant under Count II of plaintiff's Complaint.

"And for grounds of its motion states that under the law and the evidence plaintiff is not entitled to recover under that Count."

The Court reserved its ruling on said motion for a directed verdict.

Defendant's Evidence.

Mr. Hocker: Now Your Honor please, I would like to offer into evidence Defendant's Exhibit A, which is the agreement between the Pulitzer Publishing Company and the Globe-Democrat Publishing Company and the St. Louis, Missouri, Paper Carriers' Union No. 450, affiliated with the I. P. P. & A. U.

I would like to offer in evidence Defendant's Exhibit B, which is the reply of Mr. Bauman to the letter of Mr. Al Halls, dated May 16, 1961.

I would like to offer in evidence Defendant's Exhibit C, which is the Globe-Democrat news dealers' statement of policy, dated August 19, 1959, and Defendant's Exhibit D, which is the Globe-Democrat carriers' statement of policy, dated May 24, 1962, and I would like to ask leave to read certain portions of it to the jury, Your Honor.

The Court: Any objection?

Mr. Siegel: Is this from Exhibit D?

Mr. Hocker: It involves Exhibit A, B, C and D.

Mr. Siegel: If Your Honor please, there have been extensive portions of those exhibits already read to the jury, and if this would be a repetition of the same I would have objection to it.

The Court: Do you have any objection to the exhibits being admitted?

Mr. Siegel: No, Your Honor.

Mr. Hocker: Then I ask leave to pass them to the jury, Your Honor.

The Court: Very well. They may be admitted.

Now just a minute. What else have we got in the way of evidence?

Mr. Hocker: That is defendant's case, Your Honor.

The Court: Those are all the exhibits being offered?

Mr. Hocker: Yes, sir.

The Court: All right. They may be passed to the jury. Is there anything else that the jury has not seen that is an exhibit that anybody wants the jury to see?

Mr. Siegel: Yes, Your Honor. I think Plaintiff's Exhibits 1 through 4, I believe, were previously passed, and I would like the rest of Plaintiff's Exhibits 5 through 22, although I am not certain that No. 14 was received in evidence. If not, I would like to offer it.

Mr. Hocker: If Your Honor please, I don't want my four exhibits passed at the same time that plaintiff's 22 are passed. I think the plaintiff has closed its case and I would object to its reopening it to pass these exhibits.

The Court: You can pass your exhibits right now. Let's see what else we have got here in the way of exhibits.

Mr. Hocker: All right. Your Honor, so far as the union contract is concerned, I am only interested in Section 2 respecting price.

(At this point Defendant's Exhibits A, B, C and D were passed to the jury for their examination.)

The Court: Mr. Hocker, does the defendant have any additional testimony?

Mr. Hocker: Defendant rests, Your Honor.

Plaintiff's Motion for Directed Verdict.

Now, at the close of all of the evidence, Plaintiff moves the Court to direct the jury to return a verdict finding the issues herein in favor of the Plaintiff under Count II of the Plaintiff's Complaint as to liability and the fact of

damage, and, in support of this Motion, states the following grounds:

1. No evidence has been offered or received which raises a defense to the allegations contained in Plaintiff's Complaint.

2. The evidence in this case conclusively establishes and proves the allegations contained in Plaintiff's Complaint.

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Motion for Directed Verdict.

Mr. Dorsey: Yes, Your Honor. We would like to make a record of the grounds for our Motion for Directed Verdict. We feel that certainly the question of interstate commerce should not go to the jury when the plaintiff sells advertising to firms in New York and elsewhere throughout the United States for products they are selling for their readership. This includes their readership in Kirkwood and route 99. They are selling to the readership in interstate commerce to advertisers. It is clear in the record that they disseminate interstate advertising. When the defendant sells its newspapers for distribution in the St. Louis area, including route 99 in Kirkwood, it is selling advertising but especially news. Part of this news is gathered in interstate commerce, in Washington and all over the world. There is no question but what the interstate dissemination of news and advertising is a part of the flow of interstate commerce.

When the price of a newspaper to a home delivery customer in Kirkwood is attempted to be set by the actions of the defendant in combination or conspiracy with others, these actions of attempting to set the price take effect upon the flow of interstate commerce. When actions that

violate the Antitrust laws take effect upon the flow of interstate commerce rather than taking effect upon the flow of intrastate commerce but having some effect upon interstate commerce, then no inquiry need be made about the amount of restraint of interstate commerce or whether the actions sufficiently affect interstate commerce to be within the terms of the Act.

The question of a contractual right of the defendant to terminate the exclusive nature of route 99 should not go to the jury. It is clear in the Lessig case and in footnote 17 of the Osborn case that actions which violate the antitrust laws are a violation even if done in accordance with an express provision of the contract. This would, of course, be true with respect to a unilateral statement of policy of the defendant even should it be held that the plaintiff operating pursuant to that policy would become some sort of agreement.

We feel that as a matter of law there is liability with respect to interference with the plaintiff's business on route 99. The ruling case of Parke, Davis, which says that a supplier has a right to select his own customers, as decided in the Colgate case, but that as soon as he goes beyond the announcement of his suggested resale price and mere declination to sell to any customer who does not comply with that suggested resale price, he has formed a combination or conspiracy in restraint of trade and has violated Section 1 of the Sherman Act.

It is clear that the defendant went much beyond these permissible actions in this case. He entered into an agreement with Milne Sales to solicit the customers and potential customers of plaintiff within route 99. Pursuant to this agreement the customers and potential customers were solicited on the basis of statements that the plaintiff was charging more than the suggested resale price, and that they would see that they received the paper at the suggested resale price if they wanted to make the change.

Pursuant to this solicitation, the customers and potential customers of the plaintiff were instigated to and did make complaints against the plaintiff and over three hundred of them ceased doing business with him and he lost their business. It is plain that this constituted the most effective case of pressure by means of combination to overcome the independent business judgment of the plaintiff, which independent business judgment it is the very purpose of the antitrust laws to protect. It is plain that this was effective pressure because whereas for nearly three years the defendant had by his own pressure been trying to make the plaintiff charge the suggested resale price without any effect, nevertheless, within a few days after the pressure of his customers upon plaintiff's customers was added to the pressure of the defendant, plaintiff's independent judgment was in fact overcome, and he did start charging the defendant's suggested resale price.

Furthermore, there is, as a matter of law, liability with respect to this aspect of the case even should it be held that defendant's statement of policy and the plaintiff's subsequent selling of papers amounted to an agreement with respect to price between the plaintiff and defendant. If such an agreement came into effect, it was an unlawful agreement under Section 1 of the Sherman Act. And plaintiff would not be in pari delicto but could sue for his injuries resulting from this, as shown in the case of Simpson v. Union Oil Company and Osborn v. Sinclair Oil Company.

Liability is clear as a matter of law with respect to termination. Termination is unlawful if done pursuant to an unlawful combination or conspiracy. The defendant had entered into a combination or conspiracy with Kroner to enable the defendant to have newspapers delivered on route 99 without delivering them through the plaintiff. This was an additional combination or conspiracy with respect to interference with the plaintiff's business. And this combination or conspiracy between

Kroner and defendant was in effect prior to the time of the termination of plaintiff's carrier relationship, at the time of such termination, and after the date of such termination and the arrangement with Kroner to deliver the papers to the customers taken away from plaintiff enabled the defendant to keep these customers away from the plaintiff and to deny him the right to sell these customers to the customer to whom he sold his route. This was a continuing combination or conspiracy, and the fact that it was still continuing at the time of the termination to coerce the plaintiff to comply with defendant's resale price policy is shown by evidence in the record that after termination when Albrecht and Schwarzenbach, his prospective customer, talked with officers of the defendant the business manager of defendant at that time suggested to plaintiff that if he bought back the customers from Kroner that he could continue to deliver the Globe-Democrat on route 99 if he would then and thereafter comply with defendant's resale price policy.

The combination and conspiracy with Kroner and the acts of solicitation in combination with Milne Sales cannot be made innocent acts and not violation of the antitrust laws on the ground that they were an exercise of the right to compete whether or not this right is asserted on the basis of a contract with the plaintiff. If the defendant had a right to compete with the plaintiff on route 99 or had a right to end the exclusive nature of route 99 and allow some independent carrier to compete, this right would only extend to either the defendant's entering into the carrier business in good faith with the intent to remain in the carrier business and profit from that and remain indefinitely. The evidence is overwhelming that the defendant did not have such intent, did not remain, and therefore was not competing in good faith.

With respect to the right to supply papers to another who would then compete with the plaintiff on route 99, if there was such a right, it would only extend to announc-

ing that route 99 was no longer exclusive and that the defendant would be willing to sell newspapers to another carrier for delivery on route 99, leaving it to such an independent carrier to go in and make his own solicitation without concert, combination, or conspiracy with the defendant; and certainly not pursuant to the defendant's own solicitation, but would give only the right for the independent carrier to go in on his own and get such customers as he could persuade to buy from him by good faith methods of competition. Then the defendant could sell him such newspapers as he wished to purchase.

This leads to the question of determination if the policy statement by the defendant and subsequent actions of the plaintiff did in fact give rise to any sort of agreement with respect to them. The defendant's termination for refusal of the plaintiff to continue to charge the defendant's price in accordance with the agreement which would be an unlawful agreement, would be an unlawful termination. This is clear in the Simpson case and in the Osborn case.

If there was no such agreement between the plaintiff and defendant, and, if, as we do not admit, the termination was not pursuant to the existing combination or conspiracy but was unilateral, it would still be an unlawful termination because it was for the purpose of coercing the plaintiff to charge the defendant's resale price and would then be for the purpose of coercing him to go along with the unlawful scheme of resale price maintenance, which would in this case be unlawful because of the combination or conspiracy between the defendant and Milne, the defendant and plaintiff's customers, and defendant and Kroner.

Plaintiff feels that as a matter of law that there are damages resulting from the unlawful acts in combination and conspiracy that resulted in interference with the plaintiff's business and that resulted in unlawful termination and requests that the Court instruct the jury not only

as to interstate commerce and that a contractual right would not be a defense, but also on the fact of liability both for interference and termination and on the fact of damages, but not the amount of damage, with respect both to interference and termination.

Thank you.

The Court: Mr. Hocker?

Mr. Hocker: I see two issues in the case, Your Honor, and only two issues: one is the question of whether there was any conspiracy or combination to which the defendant was a party, which is certainly a factual issue, that is a conspiracy or combination in restraint of trade. And second, whether there was any substantial effect on interstate commerce by such a conspiracy.

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* * * * * * * *

The Court: Gentlemen, in accordance with my particular practice, I intend to reserve ruling on all of these motions, including that of the defendant, for a directed verdict and at such time as we get to the Court's charge to the jury, we will let the record stand.

* * * * * * * *

The Court: Miss Wood, let the record show at the close of all the evidence in the case and after a Motion for a Directed Verdict was filed by the plaintiff, and during the time that the Charge of the Court was being considered by the attorneys for the plaintiff and the defendant and the persons present were Donald Siegel, Gray Dorsey and Lon Hocker, the plaintiff filed a motion to amend his Complaint, which is accepted by the Court; and the purpose of the amendment to the Complaint is to conform to the evidence.

The plaintiff and defendant previously by agreement, prior to the trial of the case before the jury, had stipulated that Count I, constituting a common law count for

malicious business interference, was dismissed by the plaintiff.

Plaintiff by its motion to amend the Complaint now desires to eliminate from the consideration of the jury any reference to a conspiracy under Section 1 of the Sherman Act or an illegal agreement under Section 1 of the Sherman Act, and desires that the case be submitted to the jury solely on the question of a combination under Section 1 of the Sherman Act.

Is that correct, gentlemen?

Mr. Siegel: Yes.

Mr. Dorsey: Yes. Thank you.

The Court: Very well.

Mr. Dorsey: We should amend our Motion for Directed Verdict to conform to this.

The Court: That you made already.

Mr. Siegel: The grounds were stated before the motion was made and we reiterate them.

The Court: The Motion for Directed Verdict is also amended in accordance with the Complaint.

Motion to Amend Complaint.

(Filed in U. S. District Court May 12, 1965.)

Comes now plaintiff, and as grounds for his motion, states that:

1. Count II of plaintiff's complaint consists of Paragraphs 1 through 16 which are set forth under Count I of said complaint, and at the time said complaint was filed, said Paragraphs 1 through 16 were in accordance with the allegations of Paragraph 17 incorporated in Count II by reference, as though each and every allegation in

said Paragraphs 1 through 16 were set forth in full in Count II.

2. In order to conform to the evidence, plaintiff herewith amends: Line 2 of Paragraph 13 of Page 3,

Lines 2 & 3 of Paragraph 14 of Page 4,

Lines 2, 5 & 6 of Paragraph 19 of Page 5,

by substituting in lieu of the words: ". . . a person or persons unknown to plaintiff," the words: "plaintiff's customers and/or Milne Circulations Sales Inc. and/or George Kroner," and amends: Line 2 of Paragraph 15 of Page 4, by substituting in lieu of the words: ". . . third person or persons," the words: "plaintiff's customers and/or Milne Circulations Sales Inc. and/or George Kroner."

3. Plaintiff hereby amends its complaint and supplemental complaint by deleting therefrom the words: "conspired," "colluded," "conspire," "conspiracies," "collusion," wherever those words appear in plaintiff's complaint or supplemental complaint.

BARTLEY, SIEGEL & BARTLEY,
By .....
DONALD S. SIEGEL,
130 South Bemiston Avenue,
Clayton, Missouri, 63105,
and
.....
GRAY L. DORSEY,
122 Ridge Crest Drive,
Chesterfield, Missouri,
HOpkins 9-3362.

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* * * * * * *

Objections to Instructions.

Mr. Dorsey: Plaintiff then objects to the instructions in that plaintiff's requested instructions 16, 17 and 18, which were refused in significant parts by the Court, should have been given because they do relate to general statements of law and to the specific facts and evidence in the case.

Plaintiff objects to the Charge in that it qualifies the instructions with respect to present value of loss of future profits by the following: "Less the reasonable value of the return plaintiff would have made on the amount he received for the sale of his route and less the reasonable value of the services of the plaintiff and his wife necessary to the operation of the route during the period of time future profits are calculated;" in that plaintiff feels it is erroneous under the Lessig case, and that plaintiff further objects to that under paragraph 4 of the damage instruction of the Court on page 16 of the Court's Charge, in that it does not direct the jury as to the other type of evidence bearing on the loss of future profits which were put in by the plaintiff, in accordance with plaintiff's requested instruction number 21, which was refused in this respect.

Plaintiff further objects to the quoted language just above being included in this charge on damages, in that there was no evidence put in from which the jury could form any independent judgment with respect to the amount of such reduction from loss of future profits. We feel certain that it is confusing and misleading.

The plaintiff objects to the refusal to give plaintiff's substitute instruction number 22, which would inform the jury of the reason for giving treble damages and particularly for allowing loss of future profits to the plaintiff in a private anti-trust suit in view of repeated statements of the Courts of Appeal that not to give such future loss of profits would frustrate the purpose of supplementing the enforcement of the anti-trust law, which is a major

purpose for the inclusion of that provision in the anti-trust law.

Plaintiff objects to the Court's refusal to give that part of its requested instruction number 24 which was not included in the Charge to the jury, in that the jury was not instructed that the policy statement of defendant was not a contract unless it was accepted by plaintiff.

Plaintiff objects to the refusal to give plaintiff's requested instructions numbers 25, 26 and 27 stating the nature or definition of "combination" to the extent that this was not included in the Charge to the jury, as to which the plaintiff objects that the Charge of the Court requires a finding of a common purpose to the finding of a combination.

Plaintiff objects to the refusal to give plaintiff's instruction number 28 that would direct the jury that in determining the amount of damages awarded to the plaintiff for present value of future profits they should not consider whether plaintiff may earn any income from any business or employment in the future.

I think that covers it.

* * * * * * *

Plaintiff's Requested Instructions Refused by Court.

Instruction No. 16.

You are instructed that if you find and believe by the preponderance or greater weight of the evidence introduced in this case, that Defendant, The Herald Company, and/or together with George Kroner and/or Milne Circulation Sales, Inc., and/or the customers of the Plaintiff, beginning on or about May 20, 1964, combined to restrain trade, then you will find that the Defendant has violated Section 1 of the Sherman Act. If you find that the Defendant, directly or through Milne

Sales, contacted the customers of Plaintiff by letter, telephone or door-to-door solicitation, and informed them that they were paying more than the suggested retail price for the Globe-Democrat, and that Defendant would deliver the paper to them for the suggested retail price if they so desired; and if you find that Defendant was not at that time in the business of being a carrier of newspapers on home delivery routes, had no intention of going into the newspaper carrier business on home delivery routes had no equipment and no employees for engaging in the carrier business, had no intention of serving the customers it was soliciting as a newspaper carrier, except temporarily, and did not serve these customers as a newspaper carrier except for a very short period of time; and if you find that these solicitations did result in some 300 customers being lost to the Plaintiff; and if you find that these customers were turned over to George Kroner without charge and with the understanding that he would deliver the Globe-Democrat to these customers within the territorial boundaries of the Route previously recognized as the exclusive Route of the Plaintiff; and if you find that the Defendant refused to give new starts within that territory to the Plaintiff, but gave them instead to Kroner; and if you find that the pressure resulting from the customers and former customers of the Plaintiff getting in touch with him and questioning the price that he was charging for the Globe-Democrat, and the pressure resulting from the fact that the Defendant and Kroner, by concerted action, were preventing the Plaintiff from getting new business which would normally go to him, and were interfering with Plaintiff getting back his old customers; and if you find that these pressures resulting from the combined action of Defendant and Plaintiff's customers, and of the Defendant and Milne Circulation Sales, Inc., and of the Defendant and Kroner were designed to cause the Plaintiff to charge the retail price suggested by the Defendant, then you will find that Defendant has violated Section 1 of the Sherman Act.

Instruction No. 17.

You are instructed that if you find that the termination of the Plaintiff's carrier relationship with the Defendant was done pursuant to the combination and conspiracy which was directed at overcoming his independent business judgment and causing him to charge the retail price suggested by the Defendant, then you will find that this termination was a violation of Section 1 of the Sherman Act. If you find that the only dissatisfaction that Defendant had with Plaintiff, as a carrier, was his refusal to charge the suggested retail price; and if you find that because of this dissatisfaction, the Defendant engaged in letter, telephone and door-to-door solicitation and took some 300 customers away from the Plaintiff, and further refused to give Plaintiff new starts; and if you find that after this action was commenced, Defendant terminated Plaintiff's carrier relationship; and if you find that Defendant announced that it would refuse to give the 300 customers taken from the Plaintiff to a purchaser of Plaintiff's Route; and if you find that the Defendant announced it would refuse to give new starts in that area to the purchaser of the Plaintiff's Route; and if you find and believe from the evidence that the purpose of the termination and of withholding these customers and new starts from a purchaser of Plaintiff's Route was to coerce the Plaintiff into complying with the Defendant's suggested resale price, if he should dismiss his suit and resume his carrier route, and if you find that the Defendant was able to withhold these customers and new starts from the purchaser of Plaintiff's Route only because of the combination or concerted action with Kroner, Plaintiff's customers and Milne Circulation Sales, Inc., then you will find that the termination of Plaintiff's carrier relationship was done pursuant to an unlawful combination or conspiracy and was a violation of Section 1 of the Sherman Act.

Instruction No. 18.

If you find that the Defendant did violate Section 1 of the Sherman Act by entwining Milne Circulation Sales, Inc., the customers of the Plaintiff and Kroner in a combination or concert of actions to coerce the Plaintiff to comply with its suggested resale price, thereby going beyond such pressure as would have been exerted by a mere declination to sell upon refusal to follow suggested resale price, according to the instructions that I have given you above, and if you find that Defendant terminated the carrier relationship of the Plaintiff unilaterally, and not in concert or combination with any other persons, but if you further find that this unilateral act of termination was done because of Plaintiff's refusal to follow the resale price demanded by the unlawful combination or conspiracy and thus, himself, to enter into an unlawful combination with the Defendant, then you will find that the termination, though unilaterally done, was caused by the unlawful acts of the Defendant, and that any injuries to the Plaintiff were the proximate result of the unlawful acts of the Defendant that were in violation of Section 1 of the Sherman Act.

Instruction No. 21.

In connection with the award of any damages, you are instructed that in arriving at the amount thereof you should attempt to do so with reasonable certainty; you should not speculate or guess as to the extent of such damages to any greater extent than is necessary to compensate the Plaintiff for any damage which was done to him in his business and property. You should not speculate or guess as to the question of whether or not damages have actually been suffered. To render any verdict for damages you must find that as a direct and proximate result of any unlawful conduct of the Defendant, as I have elsewhere in this charge instructed you, the Plain-

tiff's business or property was damaged. In order to find damages for the Plaintiff you must find that by the preponderance or greater weight of the evidence, damages actually were suffered by the Plaintiff as a direct and proximate result of the unlawful actions of the Defendant.

In determining the amount of damages, if any, awarded to Plaintiff, in this type of case where positive proof is not possible, the jury's estimate of the amount of damages is allowable. Any other rule would make it impossible, at times, to compensate where a wrong has been done. So you should take into consideration all the facts and circumstances surrounding the transactions, and estimate, as accurately as you can, the reasonable amount of such damages. The amount of damages is not rendered uncertain because it cannot be calculated with absolute exactness. It is sufficient if a reasonable basis of computation is afforded although the result be only approximate, and no party that has violated the antitrust law is entitled to complain that the precise damages suffered cannot be measured exactly.

You should make the determination of the amount of damages as a matter of judgment from the evidence. You may consider:

(1) the amount of net profit Plaintiff would have received from sales to the 330 customers between June and October 31, 1964, except for the unlawful acts of the Defendant;

(2) the expenses that Plaintiff sustained between June and October 31, 1964, as a result of the unlawful acts of the Defendant;

(3) the difference between the amount Plaintiff actually received from the sale of newspaper Route 99 and the amount he would have received as shown by the evidence except for the unlawful acts of the Defendant;

(4) the present value of profits Plaintiff would reasonably be expected to have made in the future except for the unlawful acts of the Defendant, in connection with which you may consider the net profits Plaintiff derived from Route 99 in years prior to the time of Defendant's unlawful acts of combination and conspiracy and resulting interference and unlawful termination, evidence of the stability of this type of business, Plaintiff's ability and competence as a carrier, evidence as to whether in every respect except pricing policy Plaintiff was a good carrier and entirely satisfactory to the Defendant, Plaintiff's age, health and ability to continue operating Route 99, evidence as to his intent to continue, the kind of work involved in the carrier business, evidence of Plaintiff's worklife expectancy, evidence as to the present value of expected future profits, and other evidence.

Instruction No. 22.

You are instructed that the grant to persons injured by violations of the antitrust laws of the right to sue in the federal courts for treble the amount of damages suffered is intended not only to compensate persons wrongfully injured but also to multiply the agencies helping to enforce the antitrust laws and thus make them more effective. This salutary purpose would be in large measure frustrated if the plaintiff in a private antitrust suit were not allowed to recover damages unless the amount could be proved with complete certainty and exactness. The amount of loss of future profits is difficult to determine and cannot be proved with complete certainty. However, in many private antitrust actions, as in this one, the principal element of damage is the loss of future profits caused by unlawful termination. Therefore, you should determine the amount to be awarded for such future loss of profits as a matter of judgment from the evidence, as I have instructed you, bearing in mind that this is an action for

damages for unlawful injuries to Plaintiff's business or property, and Plaintiff is entitled to recover for all injuries resulting directly and proximately from Defendant's unlawful acts in violation of the antitrust laws.

Instruction No. 24.

You are instructed that the policy statement of Defendant which purported to give it the right to end the exclusive nature of any carrier's route for failure to comply with the resale price policy of Defendant could not give rise to a contract unless there was some action on the part of Plaintiff indicating acceptance of such a provision; that refusal to follow the resale price policy would be evidence that Plaintiff did not accept this provision, and that if such a contract did arise actions by Defendant to compel Plaintiff to adhere to its resale prices by a coercive scheme not limited to refusal to deal announced in advance would be unlawful, even though done in exercise of a right expressly granted by such a contract.

Instruction No. 25.

The Court instructs you that an unlawful combination is defined as conduct or action on the part of a seller to effect adherence to his resale price policy which goes beyond announcing a resale price policy and declining to sell to those who fail or refuse to adhere to his resale price policy.

Instruction No. 26.

The Court instructs you that when a seller does no more than announce a resale price policy and a declination to sell to those who fail or refuse to adhere to such policy, he has not put together an unlawful combination. If, however, the seller goes further and engages in actions with one or more persons, extending beyond the bare announce-

ment of his resale price policy and a declination to sell, in order to effect adherence to his resale price policy, then he has engaged in an unlawful combination in violation of the antitrust laws.

Instruction No. 27.

The Court instructs you that when a seller does no more than announce a resale price policy and declines to sell to those who fail or refuse to adhere to such policy he has not put together an unlawful combination. If, however, the seller goes further and engages in actions or conduct with one or more persons extending beyond the announcement of his resale price policy and a declination to sell, and employs other means to effect adherence to his resale price policy, then he has engaged in an unlawful combination in violation of the antitrust laws.

Instruction No. 28.

The Court instructs you that in determining the amount of damages, if any, awarded to plaintiff for the present value of profits plaintiff would reasonably be expected to have made in the future except for any unlawful acts of the defendant, you should not consider whether plaintiff may earn any income from any business or employment in the future.

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Court's Charge to the Jury.

The Court: Members of the jury:

• • • • • • • •

The plaintiff in this case, Lester J. Albrecht, is an individual who was an independent contractor, that is, he was in business for himself, and his business was carrying the Globe-Democrat newspaper and delivering that paper

to the homes of residents in an area of Kirkwood, which for many years had been designated as route 99. The defendant is The Herald Company, a New York corporation which publishes the Globe-Democrat in St. Louis, and which does this in St. Louis as the Globe-Democrat Publishing Company.

Plaintiff seeks damages for injury to his business or property claimed to have been suffered as a result of defendant's alleged violations of the antitrust laws of the United States.

Specifically, plaintiff claims

(1) that defendant entered into an unlawful combination wih Milne Circulation Sales, Inc., and/or George Kroner and/or plaintiff's customers to fix or maintain the defendant's suggested retail price of the Globe-Democrat newspapers, and that the action of defendant in solicting the customers of plaintiff and of terminating plaintiff's paper route were coercive and for the purpose of enforcing the suggested retail price on route 99 in the Kirkwood area, and that such actions have restrained trade in the distribution of the Globe-Democrat in interstate commerce;

(2) that these activities have proximately caused damage to plaintiff's business or property.

The defendant's position is:

(1) that no combination was ever formed between the defendant and any other person or corporation, and that the actions of the defendant or any other person acting with it were not coercive;

(2) that the plaintiff had failed to sustain the burden of proof by the preponderance of the evidence;

(3) that the plaintiff has suffered no damage as a direct result of a violation, if any, of the antitrust laws.

The Court instructs the jury that this action is based upon what is commonly known as the Sherman Act.

Section 1 of the Sherman Antitrust Act, dealing with restraints of trade, provides that:

> "Every contract, combination . . . or conspiracy, in restraint of (interstate) trade or commerce . . . is . . . illegal . . ."

The Clayton Act provides a remedy for violation of the Sherman Act. Section 4 of the Clayton Act provides:

> "That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any District Court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the cost of suit, including a reasonable attorney's fee."

You are instructed that the business of obtaining and disseminating local and national advertising, local, national and worldwide news as is done by the defendant in this action is interstate commerce within the meaning of the Act, and that the actions of the defendant in disseminating its newspaper within route 99 in Kirkwood and in other areas within Missouri and Illinois, were done in interstate commerce and are, therefore, subject to the prohibitions contained in the Sherman Act.

The word "person" as used in the Antitrust Law, is not restricted to natural persons, but includes corporations.

You are instructed that a corporation, such as defendand The Herald Company can be a member of a combination the same as a natural person, and the officers, directors and agents of defendant The Herald Company can be members. However, a corporation and its officers

cannot, just between themselves, constitute a combination. You can find a combination in this case only if you find that at least one other person or corporation combined with defendant The Herald Company for unlawful purposes.

The Court instructs the jury that a corporation can act only by and through its agents, officers, directors, servants, and employees. Therefore, any act on the part of one of its agents, officers, directors, servants, and employees within the scope and course of his employment would be the act of the corporation and the corporation would be responsible and liable therefor. Acts of a corporate agent, officer, director or employee are within the "scope and course of employment" even though not specifically authorized by the corporation, if they are done, even though mistakenly or ill-advisedly, with a view to further the corporation's interests, under the general authority and direction of the corporation and if they naturally arise from the performance of such agents, officers, directors, servants, or employees' work.

The Court instructs the jury that there are two kinds of evidence: direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proven directly, and without inference from other facts. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the essence of known facts. In arriving at your verdict, you are to consider all of the evidence, both direct and circumstantial.

Before a fact sought to be established can be said to have been proved by circumstantial evidence alone, it is necessary not only that the circumstances directly proved by the evidence shall reasonably give rise to an inference of the fact sought to be established, but also that no other equally reasonable inference can be drawn from the same circumstances. If two equally reasonable inferences can be drawn from circumstances directly proved by the evi-

dence, one consistent with the fact sought to be proved and the other inconsistent therewith, you should not infer the fact sought to be proved from such circumstances alone.

Moreover, when the right of recovery depends upon the existence of any particular fact, which must be inferred from proven facts, it is not permissible to make such an inference in the face of positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist.

The antitrust laws are intended to foster and preserve our system of free, competitive enterprise, to preserve the fullest practicable competition in the market place and any business or industry.

Thus, any interference by combination, with the ordinary and usual competitive-pricing system of the open market constitutes an unreasonable restraint of trade, and is in itself unlawful. The mere fact that there may be business justifications for the fixing or maintaining of prices, or the fact that the fixed or maintained prices may be reasonable, will not constitute a legal justification for such fixing or maintaining of prices.

Intent is the purpose or aim or state of mind with which one acts or fails to act. A person is usually held to intend to do or fail to do everything such person knowingly does in fact do or fail to do. It is reasonable to infer also that a person ordinarily intends all the natural and probable consequences of acts knowingly done or knowingly omitted. So unless the contrary appears from the evidence, the jury may draw the inference and find that a person intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done or knowingly omitted by such person.

An act or failure to act is done knowingly, if done voluntarily and purposely, and not because of mistake or inadvertance or other innocent reason.

Intent may be proved by indirect evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eye-witness account of the state of mind with which the acts were done or omitted. What a person does or fails to do may indicate either intent or lack of intent.

In determining any issue involving intent, the jury should examine all the facts and circumstances in evidence which tend to shed light on state of mind.

You are instructed that the burden of proof rests upon the plaintiff to prove each of the essential elements necessary under the instructions by a preponderance of the evidence in the case. Therefore, if the plaintiff fails to sustain this burden of proof, your verdict shall be against the plaintiff and in favor of the defendant.

The Court instructs the jury that the plaintiff has abandoned as the ground for recovery in this case the allegations of his complaint that the defendant did conspire and collude with some other person or persons, and the allegation of his complaint that the defendant has entered into illegal contracts or agreements or has unlawfully conspired with a person or persons, and plaintiff has abandoned the allegation that such alleged conspiracies were accomplished and brought about by illegal contracts or agreements between the publisher and a person or persons, and you will not consider these allegations or anything that has been said by Court or counsel in regard to these in arriving at your verdict.

The only ground of liability submitted to you, therefore, is the question of whether the defendant combined with some other person or persons to violate Section 1 of

Title 15 U. S. C. A., providing "Every contract, combination . . . or conspiracy in restraint of trade or commerce among the several states . . . is declared to be illegal . . ."

The effect of this act is to forbid combinations of traders to suppress competition, as competition, not combination, should be the law of trade.

A combination is a concerted course of action between the defendant and one or more persons. This may be with an agreement either expressed or implied or it may be without an agreement. In order to have a combination there must be a common purpose either to accomplish an unlawful act by lawful means or to accomplish a lawful act by unlawful means. The purpose of the combination must be the applying of coercion in some manner which unduly hinders or obstructs the free and natural flow of commerce in interstate trade.

A seller has the right under the law to announce a resale price policy and decline to sell to those persons who fail to refuse to adhere to this policy. Such action is not an unlawful combination in violation of the Sherman Act.

A seller may not announce a suggested resale price and thereafter enter into a combination with another person or persons, which goes beyond the mere refusal to sell and applies coercive action to enforce or obtain adherence to the suggested resale price. This is an unlawful combination prohibited by the Sherman Act.

This is true whether the suggested price is a minimum price of a maximum price.

Nothing in the Sherman Act requires that a seller of a product must grant to a customer the exclusive right to resell the product in a given territory, and for this reason it is not a violation of the act for the seller of a

product either to complete in good faith with his own customer in a given territory or to permit any other customer to compete with him in that territory. Indeed, it is not a violation of the act for the seller of a product to announce, so long as he neither conspires or combines with another person for this purpose, that he will refuse to sell to any customer who does not, in turn, resell at the suggested resale price or to make adherence to the suggested price a condition to the maintenance of the exclusive right to sell in a particular territory, nor to terminate commercial relationships with a customer who does not adhere to the suggested retail price; nor is it a violation of the Act to refuse to deal with someone solely because he has brought a lawsuit against his supplier.

The gist of the right of action claimed by the plaintiff under this Act is that the defendant combined with some other person in a combination designed to coerce the plaintiff to maintain adherence to the suggested retail price.

To engage in "competition" means to take actions which are calculated to acquire the business or customers of others in the sale of a product or commodity where the effort to gain that business or customers is made in "good faith". Good faith in this connection means for the purpose of engaging in the sale of that commodity or product, and getting customers for oneself, and not for the sole purpose of inflicting injury upon another by taking his customers away from him. Evidence showing good faith or bad faith is: whether or not the actor remains in that business after he has accomplished the injury; whether or not his acts and statements indicate that he is, in fact, intending to engage in that line of business or commerce for his own benefit and profit. Actions calculated to acquire customers or patronage, but not done in good faith, as indicated by the enumerated criteria, are, in fact, not competition.

If you find that a combination was entered into between the defendant and Milne Circulation Sales, Inc., and/or George Kroner and/or the plaintiff's customers, and pursuant to such combination the defendant or George Kroner or Milne Circulation Sales, Inc., solicited the plaintiff's customers for the purpose of coercing the plaintiff to follow the defendant's suggested retail price, then you shall find that the defendant violated the antitrust laws.

If you find an unlawful combination was formed and that the defendant pursuant to such combination terminated the working relationship between itself and the plaintiff to coerce the plaintiff to follow the defendant's suggested retail price, or terminated because plaintiff refused to comply with the defendant's suggested retail price, then this constitutes a violation of the antitrust laws, even if the right to compete or to terminate was reserved to the defendant in a statement of policy.

If you find that no combination has been proved, then your verdict should be for the defendant; even if you find that a combination existed then before you may find for the plaintiff, you must find that damage resulting to the defendant was the result of this combination. In other words, if you find that the damage done to the plaintiff, if any, was caused not by the combination, then even though you find that such combination did exist, your verdict will be in favor of the defendant.

Any injury or damage is proximately caused by an act or omission whenever it appears that the act or omission played a substantial part in actually bringing about or causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

If under the instructions of the Court, you should find that the plaintiff is entitled to a verdict, the law provides

that the plaintiff is to be fairly compensated for all damage, if any, to his business or property which was proximately caused by the defendant's conduct in violation of the antitrust laws.

In connection with the award of damages, if any, you are instructed that in arriving at the amount thereof you should attempt to do so with reasonable certainty, you should not speculate or guess as to the question of whether or not damages have actually been suffered. To render any verdict for damages you must find that as a direct and proximate result of any unlawful conduct of the defendant, as I have elsewhere in this charge instructed you, the plaintiff's business or property was damaged.

In determining the amount of damages, if any, awarded to plaintiff, you should take into consideration all the facts and circumstances surrounding the transaction and to arrive as accurately as you can, at the reasonable amount of such damages. The amount of damages is not rendered uncertain because it cannot be calculated with absolute exactness.

You should make the determination of the amount of damages as a matter of judgment from the evidence. You may consider:

(1) the amount of net profit, if any, plaintiff would have received from sales to customers between June and October 31, 1964, except for any unlawful acts of the defendant;

(2) the expenses, if any, that plaintiff sustained between June and October 31, 1964, as a result of any unlawful acts of the defendant;

(3) the difference between the amount plaintiff actually received from the sale of newspaper route 99 and the amount he would have received as shown by the evidence except for any unlawful acts of the defendant;

(4) the present value of net profits plaintiff would reasonably be expected to have made in the future, except for any unlawful acts of the defendant, less the reasonable value of the return plaintiff would have made on the amount he received for the sale of his route and less the reasonable value of the services of the plaintiff and his wife necessary to the operation of the route during the period of time future profits are calculated, in connection with which you may consider the net profits plaintiff derived from route 99 in prior years, and any other evidence.

As previously stated to you, the law provides that:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

If, under the instructions of the Court, you should find that the plaintiff is entitled to recover, your verdict will be for only the actual damages suffered by the plaintiff. That is the amount of damages as you find from the evidence in the case is reasonably necessary to compensate the plaintiff for any injury to his business or property proximately caused by one or more of the violations of the antitrust laws which you find the defendant has committed. You will not treble that amount, nor will you include any sum for cost of suit or a reasonable attorney's fee, since it is the function and duty of the Court, in the event the jury returns a verdict in favor of the plaintiff, to treble that amount in the judgment rendered for the plaintiff and also to determine and include in the judgment the amount properly to be allowed as the plaintiff's cost of suit, including a reasonable attorney's fee.

The Court has caused to be prepared for you two blank forms of verdict. If your finding shall be for the plaintiff,

you will use one form of verdict and insert in the blank left for that purpose the amount of actual damages awarded to said plaintiff, and one of your number will sign it as foreman. If your finding be in favor of defendant, you will use the other form of verdict, having one of your number sign it as foreman. When you have agreed upon a verdict you will return it into Court.

You understand, of course, that in this Court, your verdict must be unanimous. Twelve in all must agree to such verdict.

You may retire to your jury room with the bailiff.

United States District Court,
Eastern District of Missouri,
Eastern Division.

Lester J. Albrecht, Plaintiff, vs. The Herald Company, a Corporation d/b/as Globe-Democrat Publishing Company, Defendant.	}	Civil Action. File Number 64 C 302 (2).

Judgment.

(Filed in U. S. District Court May 13, 1965.)

This action came on for trial before the Court and a jury, Honorable James H. Meredith, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

It is Ordered and Adjudged that the plaintiff take nothing by his cause of action, that the action be dis-

missed on the merits, and that the defendant recover of the plaintiff Lester J. Albrecht its costs of action.

Dated at St. Louis, Missouri, this 13th day of May, 1965.

HAROLD G. PRYCE,
Clerk of Court,
By ROBERT H. BOUSMAN,
Deputy Clerk.

Motion of Plaintiff for Judgment Notwithstanding the Verdict, and, Alternatively, for a New Trial.

(Filed in U. S. District Court May 21, 1965.)

Comes now the Plaintiff, Lester J. Albrecht, and files herewith, and submits to the Court the following Motions:

Motion for Judgment Notwithstanding the Verdict.

The Plaintiff moves the Court to set aside the verdict returned on May 13, 1965, in favor of Defendant and the judgment entered thereon on May 13, 1965, and to enter judgment in favor of the Plaintiff in accordance with his Motion for Directed Verdict made at the conclusion of all the evidence, on which this Court reserved its ruling.

In support thereof, the Plaintiff states that the uncontroverted evidence, including Defendant's admission, established to a point where reasonable minds could not differ that a violation of Section 1 of the Sherman Act, as applied to resale price maintenance, had occurred.

First, Plaintiff states that the evidence on the questions of liability and the fact of damage overwhelmingly established that Defendant put together an unlawful combination in violation of the Sherman Act, to Plaintiff's damage. The evidence on these questions was uncontroverted and, indeed, admitted by Defendant. Defendant presented no

witnesses, and offered no evidence in contradiction of Plaintiff's evidence. As appears from the following summary of the evidence, there was no conflict in the evidence on the fact of liability or on the fact of damage, and nothing, therefore, for the jury to pass on in connection therewith.

The facts are uncontradicted, and furthermore, even admitted by the Defendant, that the Defendant and Milne Sales solicited the customers and potential customers of the Plaintiff; that this solicitation was not within the realm of good faith competition for Defendant admitted that it was not in the carrier business, did not want to be, had neither the necessary employees nor equipment, did not attempt to acquire customers other than those taken from Plaintiff, had never even considered making a profit from delivering papers and delivered papers only temporarily until it could find a carrier to deliver them; that the solicitation resulted in much pressure on the Plaintiff by his customers with respect to the price he was charging; that this pressure directly caused the loss of more than three hundred customers; that the additional pressure of Milne Sales's solicitation and the customers, because of a continuous flow of stop orders, did, in fact, overcome the Plaintiff's independent judgment and cause him to comply with the Defendant's suggested retail price, although this fact was not communicated to the Defendant; that Milne Sales knew that this kind of solicitation had never before been requested or undertaken and was not for the purpose of simply getting new subscribers, for which they had been employed in the past, but was for the purpose of informing the customers of Plaintiff that Plaintiff was charging more than the suggested retail price, and that Defendant was anxious to have papers delivered to home delivery customers at its suggested retail price by a method other than by Plaintiff; Milne Sales and these customers knew that their demands upon the

Plaintiff and said solicitation were for the purpose of and were calculated to cause the Plaintiff to comply with the Defendant's suggested retail price. The Defendant admitted that all of the aforementioned acts and things were done for the purpose of maintaining its suggested retail price.

It is further uncontroverted that Kroner received from the Defendant the customers taken from the Plaintiff without making any payment for them, and entered into an understanding and agreement with Defendant that he was to bill said customers taken from Plaintiff at Defendant's prescribed rate of $1.60 per month, and that he was to have the right to serve them only temporarily, until such time as the Plaintiff "got straightened out" with the Defendant; that Kroner knew that the only thing to be straightened out between Plaintiff and Defendant was the question of whether Plaintiff would follow Defendant's resale price policy; that Kroner's delivery of the Globe-Democrat to the former customers of the Plaintiff enabled the Defendant to withhold these customers and new starts from the Plaintiff; that even after Kroner commenced delivering papers to Plaintiff's former customers, Defendant told Plaintiff it would give him back all the customers he had prior to May 20, 1964, if Plaintiff would charge no more than Defendant's suggested retail price; that after termination by the Defendant of Plaintiff's carrier relationship, Defendant refused to take back the customers given to Kroner, although by agreement, it had the right to do so, and refused to allow the Plaintiff to include these customers and any new starts in the customer list Plaintiff proposed to sell to a purchaser before Defendant ceased selling papers to the Plaintiff pursuant to the termination; that Kroner knew that his delivering to the Plaintiff's former customers and to new starts on Route 99 would coerce the Plaintiff to comply with Defendant's suggested resale price policy, but knowingly acted in con-

cert with the Defendant to accomplish that coercion; that even after Defendant advised Plaintiff he was terminated and Defendant would not sell him papers after 60 days, Defendant still attempted to coerce Plaintiff to resume delivering papers as the regular carrier on Route 99, provided he would charge no more than Defendant's suggested retail price (this, too, was uncontroverted even though Defendant's officer who made said statements was asked to and did remain in Court, the record shows, to hear such testimony, and after such testimony was adduced, Defendant offered no testimony); that this combination between Kroner and the Defendant, for the purpose of securing Plaintiff's adherence to Defendant's resale price policy was in effect before, at, and after the time of termination, and the termination was pursuant to and within the contemporaneous framework of the unlawful combination, or in any event, was for refusal to comply with Defendant's resale price policy.

Second, the Plaintiff states that under the law of the **Parke, Davis** case, no common purpose is required in order to put together an unlawful combination for the purpose of resale price maintenance, and that under this rule of law, which should govern this case, the undisputed facts show a violation of Section 1 of the Sherman Act. Even if a common purpose was required, the uncontroverted facts demonstrate abundantly the existence of such common purpose. The coercion of Milne Sales, of Plaintiff's customers, and of Kroner, were added to the Defendant's coercion of Plaintiff to secure adherence to Defendant's resale price policy. This added coercion was brought about by Defendant's actions which went beyond the announcement of a retail price policy and mere declination to sell. Such coercion was intended by Defendant to effect adherence to its resale price policy, and did accomplish this unlawful aim. In doing so, it flew in the teeth of the very prohibition the Supreme Court warned of in the **Parke, Davis** case.

The facts summarized above, show as a matter of law, a violation by Defendant of Section 1 of the Sherman Act. It has long been established that where there is no conflict in the evidence and the evidence is overwhelmingly one way, the trial court should direct a verdict. In the landmark case of **Thomsen v. Cayser** (1917), 243 U. S. 66, 37 S. Ct. 353, and in many other Supreme Court and Appellate cases down to the present to the same effect, it was held that the fact of a combination need not be submitted to a jury in a treble damage action, because where there is no conflict in the evidence, there is nothing for the jury to pass on. To the same effect see **Federal Savings & Loan Ins. Corp. v. Kearney Trust Co.** (C. A. 8, 1945), 151 F. 2d 720.

The Plaintiff asks for a new trial, pursuant to the entry of judgment n. o. v., on the question of the amount of damages. On this question the Plaintiff states that the Court erred in including in its charge to the jury, with respect to the amount of damages, the language, "less the reasonable value of the return Plaintiff would have made on the amount he received for the sale of his Route and less the reasonable value of the services of the Plaintiff and his wife necessary to the operation of the Route during the period of time future profits are calculated" in paragraph (4) on page 16 of said charge. The **Lessig** case shows that the instruction on loss of future profits should not have such a qualification.

Alternative Motion for New Trial.

The Plaintiff moves the Court to grant a new trial on the issues of liability, fact of damage, and amount of damage, in the event the Court does not grant Plaintiff's motion for judgment n. o. v. on liability and the fact of damage and a new trial on the amount of damage.

In support thereof, Plaintiff states that the Court's charge to the jury was in error to the extent that it re-

quired a finding of "common purpose" as a necessary element to finding the fact of a violation of Section 1 of the Sherman Act, and that the Court erred in refusing to give Plaintiff's requested instructions, Nos. 25, 26 and 27 on the issue of combination. These instructions and the Plaintiff's position that common purpose is not a necessary element to an unlawful combination, are based on the **Parke, Davis** case.

In addition, Plaintiff states that the Court's charge to the jury was erroneous in those respects for which objections were made on the record on May 13, 1965, which are hereby incorporated herein by reference.

As a further grounds for his Motion for a New Trial, Plaintiff states that the questioning by the Court of the witness, John Darnton, and the answers elicited by the Court were prejudicial to Plaintiff and constituted reversible error.

In the event the Court grants a new trial pursuant to this Motion on the fact of liability and the fact of damage, the Plaintiff renews his request for a new trial on the amount of damage and incorporates in this Motion his allegation of error with respect to paragraph (4) on page 16 of the Court's charge to the jury.

Oral Argument requested.

Order.

(Filed in U. S. District Court June 15, 1965.)

This matter is pending on the motion of the plaintiff for judgment notwithstanding the verdict and alternatively for a new trial. The Court has been duly advised by briefs and oral arguments and is of the opinion that the verdict of the jury finding a judgment for the defendant should not be disturbed. Accordingly,

It Is Hereby Ordered that the motion of the plaintiff for a judgment notwithstanding the verdict and alternatively for a new trial be and the same is overruled.

Dated this 15th day of June, 1965.

/s/ JAMES H. MEREDITH,
United States District Judge.

Notice of Appeal.

(Filed in U. S. District Court June 24, 1965.)

Notice is hereby given that Lester J. Albrecht, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Eighth Circuit, from the judgment entered in this action on May 13, 1965, on which a motion of the Plaintiff for a Judgment Notwithstanding the Verdict and Alternatively for a New Trial, was overruled on June 15, 1965.

Designation of Record on Appeal.

(Filed in U. S. District Court July 1, 1965.)

Comes now Plaintiff, hereinafter called Appellant, and, pursuant to the Rules of the United States Court of Appeals for the Eighth Judicial Circuit, designates the entire record and transcript of testimony as the record on appeal.

Memorandum for Clerk.

(Filed in U. S. District Court July 26, 1965.)

Plaintiff granted an extension of fifty (50) days to September 20, 1965, within which to file transcript of testimony and entire record as the record on appeal, and to docket the appeal.

Relevant Docket Entries in the District Court.

Date	Proceedings
1964	
Aug. 12	Complaint, with request for jury trial, filed and summons issued.
Aug. 18	Marshal's return to summons, etc, filed (Executed on 8-17-64).
Aug. 26	Answer filed.
Sept. 30	Set for trial on Jan. 4.
Oct. 3	Plff's Notice of taking depositions of Walter I. Evans, et al, filed.
Dec. 10	Motion of plff for leave to file a supplemental complaint, with Notice docketing motion for hearing on January motion docket, filed. Proposed supplemental complaint "lodged."
	Plff's motion for summary judgment, with supporting memo., filed. Argument requested.
Dec. 14	By consent and with leave, case removed from trial docket of Jan 4 and reset for March 1st.
1965	
Jan. 4	Depositions of G. Duncan Bauman; Geo. J. Kroner; Chas. B. Cleaver; Vernon Boyd and Walter I. Evans filed.
Jan. 8	Plff's motion for leave to file a supplemental complaint and plff's separate motion for summary judgment passed for argument to Jan 15 at 10:30 A M.
Jan. 13	Argument on plff's motions passed to January 22 at 10:30 A.M.
Jan. 15	Separate affidavits of Walter I. Evans and G. Duncan Bauman in opposition to plff's motion for summary judgment, filed.

Jan. 21 Argument on plff's motions passed to February motion docket.

Deft's brief in opposition to plff's motion for summary judgment filed.

Feb. 5 Deposition of plff filed.

Feb. 11 Deft's supplemental brief in opposition to plff's motion for summary judgment, filed.

Feb. 12 Deft not opposing plff's motion for leave to file a supplemental complaint, the proposed supplemental complaint heretofore "lodged" is now filed.

Plff's deposition exhibits filed.

Plff's separate motion for summary judgment argued and submitted on briefs heretofore filed.

Feb. 23 Order filed, for cause shown, vacating setting of March 1 and resetting case for trial on May 3. Copies of order mailed to Bartley, Siegel & Bartley and to Lon Hocker.

Mar. 10 Plff's summary of his position on each point raised in opposition to plff's motion for summary judgment, filed.

Deft's supplemental brief (in letter form) filed.

Mar. 26 Order filed overruling motion of plff for summary judgment. Copies of order mailed to Bartley, Siegel & Bartley and to Lon Hocker.

Apr. 7 Plff's interrogatories filed.

Apr. 16 Deft's answers and objections to interrogatories and motion for protective order filed.

Apr. 16 On application, plff granted leave to withdraw certain exhibits for a period of 7 days for the purpose of photostating.

Apr. 21 Plff's request for argument on deft's objections to interrogatories and motion for protective order, on May motion docket, filed.

Apr. 23 By agreement and with leave, deft's objections to interrogatories and motion for protective order, passed to further order.

Apr. 23 Plffs. return exhibits withdrawn pursuant to court order of April 16.

May 3 Passed for trial to May 5.

May 4 Deposition of James McDowell filed. Stipulation dismissing Count One of complaint filed.

May 5 Parties appear and announce ready for trial. Jury empaneled and sworn. Plff's evidence commenced.

May 6 Jury trial resumed. Plff's evidence resumed. Further proceedings on trial postponed until Monday next at 10 A. M.

May 10 Jury trial resumed. Plff's evidence resumed and concluded. Motion of deft for directed verdict in its favor at close of plff's case filed, submitted and the Court's ruling thereon reserved. Deft's evidence commenced and concluded. Motion of deft for directed verdict in its favor at close of all the evidence filed, submitted and Court's ruling thereon reserved. Motion of plff for directed verdict in his favor at close of all the evidence filed, submitted and Court's ruling thereon reserved. Further proceedings on trial postponed until Wednesday, May 12 at 10 A. M.

May 11 Transcript of opening statement of counsel for deft filed by Official Court Reporter.

May 12 Plff's motion to amend complaint filed, submitted and sustained.

May 13 Jury trial resumed. After arguments of counsel and charge by the Court, the jury retires to consider its verdict, which verdict it afterwards returns into Court finding issues in favor of deft. and against plff. Verdict filed. Judgment filed and entered accordingly. Copies of judgment mailed to Gray L Dorsey; Donald S. Siegel and Lon Hocker.

May 21 Plff's alternative motion for judgment n.o.v. or for new trial, filed. Argument requested. Memo in support of motion filed.

June 11 Plff's motion for judgment notwithstanding the verdict, and alternatively, for a new trial, argued and submitted.

June 15 Order filed overruling motion of plff for judgment notwithstanding the verdict and alternatively for a new trial. Copies of order mailed to Bartley, Siegel & Bartley and to Lon Hocker.

June 24 Plff's Notice of Appeal from Judgment of May 13, 1965 filed and copy of Notice mailed by Clerk to Lon O Hocker, atty for deft-appellee. Cost bond on appeal filed.

July 1 Plff's designation of record on appeal filed.

July 13 Plff's cost bond on appeal in the sum of $250. filed.

July 26 Plff granted extension of 50 days to September 20 within which to file and docket transcript of testimony and entire record on appeal.

[fol. 143]

SUPPLEMENTAL RECORD—Filed January 28, 1966

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 18,161

Civil

LESTER J. ALBRECHT, Appellant,

vs.

THE HERALD COMPANY, a corporation, d/b/a GLOBE-DEMOCRAT PUBLISHING COMPANY, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

[File endorsement omitted]

[fol. 144] The following, taken from pages 294 and 295 of the Transcript of the Record, occurred immediately after the colloquy recorded on page 110 of the Appellant's Record:

"The Court: The Motion for Directed Verdict is also amended in accordance with the Complaint.

"Mr. Hocker: Your Honor, of course I object to the Motion and the claim and the relief prayed for because, number one, it does not conform to the proof, as there is no evidence of any combination involving plaintiff's customers, none whatever. And there is no evidence of any combination for the purpose stated with Milne Sales, and there is no evidence of any

damage by reason of any combination with George Kroner.

"I also object to the amendment since the amendment makes the claim in Count II unintelligible. It provides that lines 2, 5 and 6 of paragraph 19, which we take it is the basis of this claim, since it is the only paragraph that mentions the Sherman Act and—

"The Court: Line what, now?

"Mr. Hocker: Lines 2, 5 and 6 of the paragraph on page 5. This makes the paragraph unintelligible and makes the petition not state a claim.

"The Court: Lines 2, 5 and 6 of paragraph 19 on page 5.

"Mr. Hocker: The copy of the Motion I have says, 'In order to conform to the evidence.'

"Mr. Siegel: It should have been 1, 5 and 6.

"Mr. Hocker: Wait a minute. Maybe I misunderstand what you are saying. You are not deleting these lines?

"Mr. Siegel: No, no.

[fol. 145] "Mr. Hocker: The only thing you are deleting then is the words, 'Person or persons unknown to plaintiff', wherever they appear?

"Mr. Siegel: And substituting in lieu thereof 'plaintiff's customers and/or Milne Circulation Sales, Inc., and/or George Kroner'.

"Mr. Hocker: What are you going to do with the words, 'contract, agreement or understanding' that appear in paragraph 18 and 19? Are they deleted or left in?

"Mr. Siegel: They are left in. Apparently there is no evidence, I guess, of any illegal agreements or contracts, except if they are illegal by constituting a combination. That aspect remains in."

[fol. 146] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 147]

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 18,161

LESTER J. ALBRECHT, Appellant,

v.

THE HERALD COMPANY, a corporation, d/b/a GLOBE-DEMOCRAT PUBLISHING COMPANY, Appellee.

Appeal from the United States District Court for the Eastern District of Missouri.

OPINION—October 20, 1966

Before Matthes, Mehaffy and Gibson, Circuit Judges.

MEHAFFY, Circuit Judge.

This is a treble damage action under § 4 of the Clayton Act, 15 U.S.C.A. § 15, for violation of § 1 of the Sherman Act, 15 U.S.C.A. § 1.

Lester J. Albrecht (hereafter plaintiff) appeals from a judgment entered pursuant to a jury verdict finding for The Herald Company, a corporation, d/b/a Globe-Democrat Publishing Company, defendant-appellee (hereafter Globe-Democrat). We affirm.

For many years the Globe-Democrat has been a morning newspaper in St. Louis, Missouri, delivered to home customers of the St. Louis and other areas through a [fol. 148] system of 172 routes. Globe-Democrat carriers are entrepreneurs, purchasing their papers at wholesale and selling them at retail. Plaintiff owned and operated Route 99 in the City of Kirkwood, St. Louis County, said route consisting of some 1200 customers.

Globe-Democrat advertised in its newspaper a suggested retail price. Each carrier had an exclusive territory but

was subject to termination *inter alia* for charging more than the suggested retail price. In case of termination, the carrier was given sixty days to provide a satisfactory purchaser for his route. Plaintiff had knowledge of Globe-Democrat's written price policy.[1]

Plaintiff adhered to the suggested retail price for several years but started overcharging in 1961. He admittedly received calls from Globe-Democrat about reported overcharging in 1961 and 1962. Finally, on May 20, 1964 Globe-Democrat wrote plaintiff as follows:

> "The Globe-Democrat Publishing Company has received and referred to you a large number of complaints from customers in the territory you are servicing as a carrier that you are charging subscribers more than the publisher's suggested retail price.
>
> "The system we customarily follow of respecting as exclusive territories of our carriers prevents the normal effect of competition to keep prices down. In order to protect the reading public against artificially high prices in restraint of trade in the territories of overpricing carriers, we have expressed in our statement of policy the intention to compete in such territories by selling the Globe-Democrat at retail ourselves or for resale by another carrier at the lower prices in the over-priced territory.
>
> [fol. 149] "In accordance with this policy, we are sending to each resident of your appointed territory the enclosed letter."

The enclosed letter advised the residents of the territory that some subscribers were being overcharged and that the Globe-Democrat would deliver the paper at the sug-

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[1] "The right of each carrier whose appointment is effective to sell the St. Louis Globe-Democrat by home delivery in his territory, will be maintained exclusively to him under the terms of his appointment so long as the price at which such sales are made in his territory shall not be higher than the price therefor suggested by the publisher for such sales in the City or County in which such territory is located."

gested retail rate.[2] These letters evidenced Globe-Democrat's decision to compete and provide its readers with the paper at the suggested rate. In addition, Globe-Democrat directed the Milne Circulation Sales Corporation, a national firm with a St. Louis office, whose business it was to procure readers for newspapers throughout the country, to engage in telephone and house-to-house solicitation to all the residents of the area in Route 99.[3] The customers thus procured—some new—some who had quit because of plaintiff's overcharge—some who changed to take advantage of the lower price—were furnished home delivery of the paper by Globe-Democrat personnel. This campaign resulted in a customer list of 314 by July 7, 1964. Globe-Democrat did not want to engage in the carrier business, and in July of 1964 advertised the new route as available without cost. George John Kroner took over the route. Kroner, a route carrier in another neighborhood, knew the Globe-Democrat would not tolerate overcharging. He knew why the route was given to him without charge and [fol. 150] understood that he might have to return it to Globe-Democrat if plaintiff sold his route or discontinued his overcharging practice.

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[2] "It has come to our attention that some Kirkwood area readers of the Globe-Democrat who subscribe to our paper through Lester J. Albrecht, 634 North Harrison, Kirkwood, Missouri, an independent merchant, are being charged more for the Globe-Democrat than our suggested retail price. The suggested retail rate for the Globe-Democrat for delivery by carrier is $1.60 per month for the daily paper, plus 20 cents for each issue of our weekend paper. In addition, the premium on reader insurance is 10 cents per week, if desired.

"If you are being charged more for the paper than our suggested retail rate, please advise us of this condition on the enclosed form and we will deliver the paper to you at the suggested retail rate.

"If you are not a regular reader of our paper, we know that you will find the Globe-Democrat stimulating, informative and exciting. Please fill in the enclosed form and we will start service at once."

[3] Milne worked exclusively for the Globe-Democrat in the St. Louis area.

During this period and thereafter, Globe-Democrat continued to sell its papers to plaintiff and plaintiff continued to serve his customers. On June 1, 1964, Globe-Democrat again objected to plaintiff about overcharging and warned plaintiff that legal steps would be taken if necessary. Following this warning, a conference between plaintiff and Globe-Democrat took place. Plaintiff was told that he could charge any price he wanted, but unless the Globe-Democrat's policy was followed, the Globe-Democrat did not have to do business with him. Plaintiff continued his practice of overcharging.

On or about July 27, 1964, a representative of Globe-Democrat told plaintiff that the Globe-Democrat was not interested in being in the carrier business and would be happy if plaintiff would take the customers back so long as he charged the suggested retail price. Plaintiff made no commitment but left the meeting and made an appointment with his attorney to bring this lawsuit. On August 21, 1964, after institution of the suit, Globe-Democrat notified plaintiff of termination of his appointment as a Globe-Democrat carrier:

> "We have received a copy of the Complaint which you have filed in the U. S. District Court asking damages from us in the amount of three hundred forty thousand dollars.
>
> "It seems apparent that the prosecution of this action is clearly inimical to the purpose for which your appointment as carrier was made and you are hereby notified that your appointment as carrier is terminated.
>
> "However, in accordance with our statement of policy, we will nevertheless give you the opportunity [fol. 151] of producing a substitute whose credit, experience and efficiency is satisfactory to us, and we will not object to his appointment on the ground that he may be paying you in connection therewith. Under the circumstances, with the lawsuit pending, we believe that sixty days is a reasonable time for this purpose.

"Accordingly, we shall cease selling you newspapers on October 21st, 1964. In the meantime, we will be ready to interview any substitute you may wish to produce."

Thereafter, Globe-Democrat granted plaintiff an extension of nine days to consummate the sale of his route. He sold the route for $12,000.00, $1,000.00 more than he had paid for it, but less than he could have gotten if Globe-Democrat had returned Kroner's 300 odd customers then comprising Route 198. Despite the competition, plaintiff retained some 900 of his original 1200 customers.

This case went to the jury, which considered the sole question whether § 1 of the Sherman Act was violated by reason of a "combination" between the Globe-Democrat and plaintiff's customers or with Milne or Kroner. This was plaintiff's theory under his amended complaint. The original complaint was in two counts, the first of which plaintiff dismissed before trial. During trial plaintiff amended Count II, eliminating the charges of conspiracy and agreements and charging a "combination" between the Globe-Democrat and "plaintiff's customers and/or Milne Circulation Sales, Inc., and/or George Kroner."[4] [fol. 152] In charging the jury, the District Court used as its principal guide the teachings of *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960).[5]

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[4] "Plaintiff by its motion to amend the Complaint now desires to eliminate from the consideration of the jury any reference to a conspiracy under Section 1 of the Sherman Act or an illegal agreement under Section 1 of the Sherman Act, and desires that the case be submitted to the jury solely on the question of a combination under Section 1 of the Sherman Act.

"Is that correct, gentlemen?

"Mr. Siegel: Yes.

"Mr. Dorsey: Yes. Thank you.

"The Court: Very well."

[5] "The only ground of liability submitted to you, therefore, is the question of whether the defendant combined with some other person or persons to violate Section 1 of Title 15 U.S.C.A., providing

[fol. 153] Restraint of trade embraces only acts, contracts, agreements or combinations which restrict competition or unduly obstruct due course of trade, thereby operating to the prejudice of the public. The Supreme Court said in *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 493 (1940):

'Every contract, combination . . . or conspiracy in restraint of trade or commerce among the several states . . . is declared to be illegal. . . .'

"The effect of this act is to forbid combinations of traders to suppress competition, as competition, not combination, should be the law of trade.

"A combination is a concerted course of action between the defendant and one or more persons. This may be with an agreement either expressed or implied or it may be without an agreement. In order to have a combination there must be a common purpose either to accomplish an unlawful act by lawful means or to accomplish a lawful act by unlawful means. The purpose of the combination must be the applying of coercion in some manner which unduly hinders or obstructs the free and natural flow of commerce in interstate trade.

"A seller has the right under the law to announce a resale price policy and decline to sell to those persons who fail to refuse to adhere to this policy. Such action is not an unlawful combination in violation of the Sherman Act.

"A seller may not announce a suggested resale price and thereafter enter into a combination with another person or persons, which goes beyond the mere refusal to sell and applies coercive action to enforce or obtain adherence to the suggested resale price. This is an unlawful combination prohibited by the Sherman Act.

"This is true whether the suggested price is a minimum price of (sic) a maximum price.

"Nothing in the Sherman Act requires that a seller of a product must grant to a customer the exclusive right to resell the product in a given territory, and for this reason it is not a violation of the act for the seller of a product either to complete (sic) in good faith with his own customer in a given territory or to permit any other customer to compete with him in that territory. Indeed, it is not a violation of the act for the seller of a product to announce, so long as he neither conspires or combines with another person for this purpose, that he will refuse to sell to any customer who does not, in turn, resell at the suggested resale price or to make adherence to the suggested price a condition to the maintenance of the exclusive right to sell in a particular territory, nor to

"The end sought [by the Sherman Act] was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services. . . ."

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terminate commercial relationships with a customer who does not adhere to the suggested retail price; nor is it a violation of the Act to refuse to deal with someone solely because he has brought a lawsuit against his supplier.

"The gist of the right of action claimed by the plaintiff under this Act is that the defendant combined with some other person in a combination designed to coerce the plaintiff to maintain adherence to the suggested retail price.

"To engage in 'competition' means to take actions which are calculated to acquire the business or customers of others in the sale of a product or commodity where the effort to gain that business or customers is made in 'good faith.' Good faith in this connection means for the purpose of engaging in the sale of that commodity or product, and getting customers for oneself, and not for the sole purpose of inflicting injury upon another by taking his customers away from him. Evidence showing good faith or bad faith is: whether or not the actor remains in that business after he has accomplished the injury; whether or not his acts and statements indicate that he is, in fact, intending to engage in that line of business or commerce for his own benefit and profit. Actions calculated to acquire customers or patronage, but not done in good faith, as indicated by the enumerated criteria, are, in fact, not competition.

"If you find that a combination was entered into between the defendant and Milne Circulation Sales, Inc., and/or George Kroner and/or the plaintiff's customers, and pursuant to such combination the defendant or George Kroner or Milne Circulation Sales, Inc., solicited the plaintiff's customers for the purpose of coercing the plaintiff to follow the defendant's suggested retail price, then you shall find that the defendant violated the antitrust laws.

"If you find an unlawful combination was formed and that the defendant pursuant to such combination terminated the working relationship between itself and the plaintiff to coerce the plaintiff to follow the defendant's suggested retail price, or terminated because plaintiff refused to comply with the defendant's suggested retail price, then this constitutes a violation of the antitrust laws,

and in *Northern Pac. R. Co.* v. *United States,* 356 U.S. 1, 4 (1958): "The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." See also *United States* v. *American Linseed Oil Co.,* 262 U.S. 371, 388-89 (1923); *American Column & Lumber Co.* v. *United States,* 257 U.S. 377, 400 (1921); *Eastern States Retail Lumber Dealers' Ass'n.* v. *United States,* 234 U.S. [fol. 154] 600, 610 (1914); *Kansas City Star Co.* v. *United States,* 240 F.2d 643, 658 (8th Cir. 1957), cert. den., 354 U.S. 923 (1957); *Feddersen Motors, Inc.* v. *Ward,* 180 F.2d 519, 521 (10th Cir. 1950).

Globe-Democrat's activity here did not hinder, but fostered and actually created competition to the benefit of the public. To have condoned plaintiff's overcharging would have been a signal to all carriers, each monopolistic in his own right, to mulct the public for all the traffic would bear.

If Globe-Democrat's activities constitute a violation of the antitrust laws, it has only one alternative, and that is to terminate all home delivery carriers by the simple declination to sell. Globe-Democrat could then make the home deliveries by its own employees. It would thus automatically become a monopolist itself and wreak such havoc as Mr. Justice Douglas decried in his opinion in *Standard Oil Co.* v. *United States,* 337 U.S. 293, 318-319 (1949):

> "But beyond all that there is the effect on the community when independents are swallowed up by the

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even if the right to compete or to terminate was reserved to the defendant in a statement of policy.

"If you find that no combination has been proved, then your verdict should be for the defendant; even if you find that a combination existed then before you may find for the plaintiff, you must find that damage resulting to the defendant was the result of this combination. In other words, if you find that the damage done to the plaintiff, if any, was caused not by the combination, then even though you find that such combination did exist, your verdict will be in favor of the defendant."

trusts and entrepreneurs become employees of absentee owners. Then there is a serious loss in citizenship. Local leadership is diluted. He who was a leader in the village becomes dependent on outsiders for his action and policy. Clerks responsible to a superior in a distant place take the place of resident proprietors beholden to no one."

The routes are valuable property rights owned by the 173 carriers. Carriers were dealt with fairly as shown by the evidence of profit ensuing and sale price of the routes. There is no suggestion in the record to the contrary. Moreover, it was Globe-Democrat and not the carriers which constantly sought additional customers to car- [fol. 155] riers' benefit through the exclusive employment of Milne Circulation Sales, Inc. for that purpose. Thus, if Globe-Democrat resorted to its only alternative, the cure would be worse than the disease. Globe-Democrat by becoming a monopolist would not benefit the public one whit. The facts in this case demonstrate, without question we think, no evil at which the Sherman Act struck. Furthermore, pursuing the alternative would destroy valuable property rights, and one of the purposes of Sherman was to preserve and protect property rights. The Supreme Court said in the first *Standard Oil* case, 221 U.S. 1, at 78 (1911), ". . . one of the fundamental purposes of the statute is to protect, not destroy, rights of property."

The principal issue is whether the record evidence compels, as a matter of law, a conclusion that Globe-Democrat participated in an unlawful combination in restraint of trade.

Home delivery of newspapers, for longer than anyone can remember, has been conducted by a system of exclusive routes. Practicality dictates this as a morning newspaper must be delivered to the homes of readers throughout the city by a certain time. When one of the witnesses was asked how long such a method of distribution had been used by Globe-Democrat, he answered "forever." Other

than payment of bills and timely delivery of the paper in good condition, the only requirement of Globe-Democrat carriers was that the public not be overcharged. Obviously, this policy was adopted to comply with the antitrust laws by insuring competition necessary for the protection of the public. Home delivery by the route system is monopolistic, whether done through independent merchants such as plaintiff, or done by the publisher. The public's protection from the harmful effects therefrom can be guar- [fol. 156] anteed only by preventing overcharging through insuring competition.

Combination is usually defined as the union or association of two or more persons for the attainment of some common end.[6] Globe-Democrat did not combine with anyone. Its action taken to provide competition to plaintiff was completely unilateral. When customers started complaining and some discontinuing their subscriptions, Globe-Democrat warned plaintiff. When Globe-Democrat's repeated warnings were ignored, it offered plaintiff's dissatisfied customers its product at its announced price. It did this first by letter followed by telephone and door-to-door campaign. It delivered the customers thus obtained by its own employees. Globe-Democrat acted only through its employees and agents. All the while, it continued to sell papers at wholesale to plaintiff. Thus, it became a carrier itself in competition with plaintiff. Once Route 198 was established by Globe-Democrat, competition was *fait accompli.* It was only thereafter that the new route was given to Kroner. Even after this, Globe-Democrat attempted to persuade plaintiff to desist from overcharging. Plaintiff, however, filed this suit, which led to his termination as a carrier. Globe-Democrat had a legal right to terminate plaintiff for filing the lawsuit.[7] It had the right

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[6] Joyce on Monopolies #1; Thornton Combinations in Restraint of Trade, ¶141, p. 96; Webster's Third New International Dictionary; Black's Law Dictionary, 4th Ed.

[7] Plaintiff continued to service his route until consummation of its sale but in the interim desisted from overcharging.

to decline to sell papers to him for good cause, no cause, or any cause except in conjunction with a scheme to violate the antitrust laws. *United States* v. *Parke, Davis & Co., supra; United States* v. *Colgate & Co.*, 250 U.S. 300 (1949); *House of Materials, Inc.* v. *Simplicity Pattern Co.*, 298 F.2d 867 (2nd Cir. 1962).

[fol. 157] Ordinarily, the existence of restraint of trade is a question of fact for the jury's determination.[8] Plaintiff insists, however, that, as in *Parke, Davis & Co.*, the question here is one of law and not of fact. If that be the case, our conclusion would be the same, as we are convinced that plaintiff failed to establish a Sherman Act violation.

Plaintiff argues that this case is controlled by *Parke, Davis* and the "per se" cases such as *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940). Neither *Parke, Davis* nor any of the "per se" cases are apposite in fact to the case at bar. Aside from the fact that plaintiff here eliminated any charge of conspiracy or agreement; that no combination whatsoever existed; and there was no coercion other than providing legal competition, the record evidence reveals many obvious distinctions from any of the reported cases relied upon by plaintiff.[9]

As examples, none of the cited cases involves a business whose product must be delivered daily at a certain time by a monopolistic delivery man; and in none does the sales

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[8] In *Winn Ave. Warehouse, Inc.* v. *Winchester Tobacco Warehouse Co.*, 339 F.2d 277, 280 (6th Cir. 1964), the court stated, "Whether a restraint is unreasonable or whether there is any restraint is a question of fact. (Citations omitted.)" Compare *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U.S. 211 (1951).

[9] Not cited is the case most closely akin: *John J. and Warren H. Graham* v. *Triangle Publications, Inc.*, 233 F.Supp. 825 (E.D. Penn. 1964). The court there held that the newspaper's resale price policy was maintained and enforced within the permissible bounds of *Colgate* and *Parke, Davis*. On appeal, the Third Circuit by per curiam opinion (344 F.2d 775 (1965)) refrained from passing on the legal issues in holding only that the District Court did not abuse its discretion in refusing to award a preliminary injunction.

price of the product to the consumer represent only a fraction of the cost of the product.[10] In none is the only [fol. 158] alternative a monopoly leaving unprotected the public interest. In none did the only alternative result in destruction of valuable property rights which the Sherman Act seeks to protect. In none did the producer continue to sell to the distributor on the same terms, but also provide the public with the alternative to purchase the product at a lower price.

Plaintiff's reliance on *Parke, Davis* is misplaced. The Court there found an illegal combination violative of the Sherman Act:

> "In thus involving the wholesalers to stop the flow of Parke Davis products to the retailers, thereby inducing retailers' adherence to its suggested retail prices, Parke Davis created a combination with the retailers and the wholesalers to maintain retail prices and violated the Sherman Act." *Supra* at 45.

Contrarily, in the instant case Globe-Democrat's activities were unilateral and no combination was formed. At this juncture, Globe-Democrat had not gone so far as to decline to sell—it continued to sell to plaintiff at the same price. After competition was established, plaintiff retained some 900 of his original 1201 customers. Only later when plaintiff brought suit was he terminated. Even then the Globe-Democrat continued to sell him until he sold the route.

Kiefer-Stewart Co. v. *Seagram & Sons*, 340 U.S. 211 (1951), furnishes plaintiff with his strongest "per se" argument. *Kiefer-Stewart* is inapposite as in that case an

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[10] The principal income of a newspaper is derived from its advertising. Its advertising rates are based on its circulation which is the lifeblood of a newspaper and accounts for utilization of such agencies as Milne here in a constant effort to increase circulation. For statistics on advertising revenue, see *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594 (1953).

agreement existed among competitors to fix a maximum resale price, thus forming an illegal combination. In *Kiefer,* there was no route system necessary, no timely home delivery required, and no natural monopoly involved whether done by the producer or distributor.

[fol. 159] We will not unduly burden this opinion by demonstrating distinctions between this and other cases, but it can safely be said that commencing with the first case under the Act, *United States* v. *Knight,* 156 U.S. 1 (1895), and continuing through *United States* v. *General Motors,* 384 U.S. 127 (1966), all reported cases are readily distinguishable from the case at bar.

The Supreme Court in *United States* v. *Hutcheson,* 312 U.S. 219, 230 (1941), said, "by the generality of its terms, the Sherman law has necessarily compelled the courts to work out its meaning from case to case." It is because of the generality of the terms of the Act coupled with the complexity of modern business that such rules as *Parke, Davis* and the "per se" became necessary for the public's protection. The basic purpose—the ratio decidendi—of the Sherman Act was protection of the public interest and preservation of freedom of competition. We, therefore, cannot construe the Sherman Act to compel Globe-Democrat to pursue a course which would restrict competition to the prejudice of the public interests.

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion." *In Re Chapman, Petitioner,* 166 U.S. 661, 667 (1897); *Lau Ow Bew* v. *United States,* 144 U.S. 47, 59 (1892); *State of Maryland* v. *United States,* 165 F.2d 869, 872 (4th Cir. 1947).

The rule of reason conceived in the original *Standard Oil* case, *supra,* is but a rule of common sense and must be applied to the instant case if the public is to be protected.

Those familiar with the historical background of the Sherman Act will recognize that none of Globe-Democrat's [fol. 160] actions resembles the evils that led to the enact-

ment of the statute. It must be conceded that the Globe-Democrat could have declined to do business with plaintiff and deliver the papers itself or through another with impunity. Globe-Democrat did not go this far and should not be penalized for its plan to protect the public against overcharging. Neither should plaintiff be rewarded for his avarice. A common sense consideration of the record evidence compels the conclusion that Globe-Democrat's action in providing competition did not remotely restrain trade, but, contrarily, fostered competition, and, therefore, our conclusion is consistent with the Sherman Act and the teachings of the Supreme Court.

As a subsidiary issue, plaintiff contends the court erred in instructing the jury that in order to have a combination, there must be a common purpose either to accomplish an unlawful act by lawful means or to accomplish a lawful act by unlawful means. This was the plaintiff's theory of the case and the only basis for recovery alleged in his complaint as amended. It was the theory upon which the case was tried and upon which plaintiff's counsel argued to the jury.[11] It is too late after conclusion of the evidence for plaintiff to shift theories. *Cf. Armstrong Cork Co.* v. *Lyons,* ..... F.2d ..... (8th Cir. Sept. 21, 1966), and cases there cited, *Whiteside* v. *W. T. Bailey Lumber Co.,* 274 F. 96 (8th Cir. 1921) and *Bracken* v. *Union Pac. R. Co.,* 75 F. 347 (8th Cir. 1896). In any event, [fol. 161] this assignment of error, as well as the others relating to the court's refusal to give certain proffered

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[11] Counsel's statement to jury:

"The issue involved in this case is a relatively simple one. We have tried to eliminate from the Complaint those matters which we thought might be confusing and somewhat repetitious or redundant in the way of claims in this matter; so that this case is now boiled down to the simple, single issue, so far as liability is concerned, as to whether or not the defendant entered into an unlawful combination with Milne or Kroner or plaintiff's customers is an effort to try to obtain adherence to the defendant's suggested retail price."

instructions, is of no consequence by reason of our conclusion that the undisputed evidence fails to show a Sherman Act violation.

The judgment is affirmed.

[fol. 162]

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 18,161—September Term, 1966

LESTER J. ALBRECHT, Appellant,

vs.

THE HERALD COMPANY, d/b/a
GLOBE-DEMOCRAT PUBLISHING COMPANY.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

JUDGMENT—October 20, 1966

This cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, affirmed.

[fol. 163]

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 18,161—September Term, 1966

[Title omitted]

ORDER STAYING ISSUANCE OF MANDATE PENDING PROCEEDINGS IN SUPREME COURT OF THE UNITED STATES—November 7, 1966

On Consideration of the motion of the appellants for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here Ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari and record have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

[fol. 164] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 165]

SUPREME COURT OF THE UNITED STATES

No. 975—October Term, 1966

LESTER J. ALBRECHT, Petitioner,

v.

THE HERALD COMPANY, ETC.

ORDER ALLOWING CERTIORARI—February 27, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.